

Opinion No. 60-51

March 21, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Honorable Tibo J. Chavez State Senator Belen, New Mexico

QUESTION

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1. In filing for office may a candidate use his regular legal name and insert his nickname between his given name and surname?
2. What would be the effect if the candidate inserted the nickname between his initials and his surname?
3. Would a person be legally filed if he uses neither his initials for his given name nor his given name but uses only a nickname with his surname?
4. Do the rulings above apply to municipal elections?

CONCLUSIONS

1. Yes, but he should be placed on the ballot only by his legal name and the nickname should be omitted.
2. He should go on the ballot by his initials and surname and the nickname should be omitted.
3. He should not be permitted on the ballot since he is not legally a declared candidate.
4. Yes.

OPINION

{*407} ANALYSIS

This office held in Opinion of Attorney General No. 6399, (1956):

{*408} "It is therefore the opinion of this office that he can use his registered name as a candidate, or if he wants to use initials, applicant had substantially complied with form of declaration of candidacy."

Opinion of Attorney General No. 57-309 (1957) held:

". . . a candidate is not required to file a declaration of candidacy in the identical name shown on his or her affidavit of registration, but **may use a legal given name or initials.**" (Emphasis supplied).

In Opinion of Attorney General No. 5956 (1954), we wrote:

"Therefore it is the opinion of this office that you are justified in placing only the legal name of the candidate upon the ballot, and you may require evidence that any name offered by the person is his legal name or initials, and unless sufficient proof be given, you must use only the candidate's name or initial and not include therein any parenthetical nickname or other cognomen."

The situations to which these rulings were directed were those where the candidate inserted his true name by the use of initials and surname or by the use of his given name (or names) and his surname, but **in addition** inserted a nickname or other cognomen. In such a situation and in the light of our attitude of liberal construction of the election code, we have had no difficulty in finding a substantial compliance in the above situations. We have simply caused the extraneous matter to be stricken or ignored in placing the candidate's true name on the ballot.

However, the third question poses a distinctly different problem. In this case the person has not used his true name. It is therefore not a question of having given his true name and inserting extraneous matter but a failure to give the true name at all.

Even under a liberal construction of the election code in favor of persons seeking public office, we cannot extend the rulings above in previous opinions to include the situation outlined in your question No. 3.

A person's "name" consists of his given name and his surname, and, where a voter writes the surname of a candidate with a given name other than that of the candidate, he has not written the candidate's name. **Murray v. Floyd**, 11 N.W. 2d 780, 216 Minn. 69.

The sole function of a "name" is to identify the person whom it is intended to designate. It was held in the case of **Putnam v. Bessom**, 197 N.E. 147, 291 Mass. 217, that the "name" of a person is the distinctive characterization in words by which he is known and distinguished from others, and a description, or **abbreviation**, is not the equivalent of a "name."

It was also held in **McNamara v. Gunderson**, 131 N.W. 183, 89 Neb. 112, that a person's name consists of a given name and a surname **and to be without knowledge of either the given name or surname is to be without knowledge of the person's name.**

When a person files a declaration and fails to insert his given name (or initials of his given name), he has not substantially complied with the requirements of the election

code and his declaration would be invalid. The same would be true where the person fails to insert his surname.

It is the opinion of this office that the insertion of a nickname in addition to the true name of the candidate does not invalidate the declaration, but that a failure to insert the true name of the candidate, no matter what else may be inserted in the space, is fatal to the validity of the declaration.

The rulings set out above would apply to municipal elections.

{*409} Section 14-14-3 requires that all elections for municipal officers shall, in all respects, be held and conducted in a manner prescribed by law in cases of county elections. County elections are covered under the general election code and that code, by statutory inclusion, applies to municipal elections.

The case of **Telles v. Carter**, 57 N.M. 704, 262 P. 2d 985, held that the general election provisions of the election code with respect to the manner of marking ballots was applicable to elections of municipal officers. While this case is not precisely in point, we feel that the reasoning relied on is controlling in the instant case.

By: B. J. Baggett

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