

Opinion No. 62-40

March 8, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. James C. Compton, District Attorney, Ninth Judicial District, Portales, New Mexico

QUESTION

QUESTION

Is a person eligible to run for State Representative in the 1962 primary election as a Democrat candidate when he has been registered with that political party only since March 5, 1962, having initially registered without showing any party affiliation?

CONCLUSION

No.

OPINION

ANALYSIS

In your opinion request, the following factual background, insofar as you are aware, is related. A person who filed as a Democratic candidate for State Representative on March 6, 1962, was registered as a voter from September, 1953, to 1961, **with no party affiliation shown on the affidavit of registration**. During the most recent purging of registrants in 1961, his name was removed from the voting records. On March 5, 1962, he re-registered, listing his party affiliation as Democrat. The following day he submitted his Petition for Declaration of Candidacy as a State Representative. Your question is whether he is eligible to seek this office in the forthcoming primary election. Based upon the facts given us, our conclusion is no.

Section 3-11-43, N.M.S.A., 1953 Compilation (P.S.), provides in pertinent part that:

"No person shall become a candidate for nomination for any office who has not been affiliated with the party in which he seeks office, **as shown by his registration affidavit**, for a period of **not less than twelve months prior to the issuance of the proclamation** herein required by the governor of the state of New Mexico, or **since his initial registration to vote** in the state of New Mexico." (Emphasis added).

Section 3-11-42, N.M.S.A., 1953 Compilation (P.S.) makes it incumbent upon the governor of the State to issue and file with the Secretary of State on the first Monday in

February of each even numbered year a proclamation calling for a primary election to be held on the second Tuesday in May of that same year.

The prospective candidate about whom you inquire does not meet the mandatory statutory requirement of being affiliated with the party in which he seeks office either since his **initial** registration to vote in this State or for twelve months prior to the governor's public proclamation calling for the 1962 primary election.

You do not state the reason why the initial affidavit of registration of the person in question shows no party affiliation, i.e., whether registrant declined to state (Section 3-2-7, N.M.S.A., 1953 Compilation) whether it was simply an oversight, but it makes no difference for the purposes of this opinion. If the person declined to state, he could not be a candidate of either party. Section 3-11-43, **supra**. And if the reason was simply an oversight, the statutes nonetheless place the burden on the registrant to see that his party affiliation is properly shown on his affidavit of registration. Section 3-2-47, N.M.S.A., 1953 Compilation (P.S.), Section 3-11-50, N.M.S.A., 1953 Compilation (P.S.); Section 3-11-43, **supra**.

The procedure to be followed by the county clerk in cases such as this is set forth in Section 3-11-46, N.M.S.A., 1953 Compilation (P.S.), and provides as follows:

"The county clerk or the secretary of state, upon receipt of the declaration required hereunder, accompanied by the required filing fee, shall receive and file said declaration. The secretary of state or county clerk, as the case may be, **shall determine within ten days from the date of filing of such declaration whether the statements made therein are true, in which event, and not otherwise, the candidate's name shall be placed upon the primary ballot.** In the event it is determined that any statements made in the declaration are not true, the district attorney, attorney general, and the candidate shall be notified immediately. Any such determination by a county clerk or secretary of state shall be subject to review by a court of competent jurisdiction." (Emphasis added).

The declaration of candidacy requires that the declarant depose that he either has been a member of the particular party, as shown by his affidavit of registration, for not less than twelve months prior to the first Monday of February of this year or since his initial registration in the state of New Mexico. Section 3-11-43, *supra*. If the county clerk determines that this is not in fact true, the candidate's name is not to be placed upon the primary ballot. Section 3-11-43, *supra*, and Section 3-11-46, *supra*.