

Opinion No. 63-139

October 21, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mrs. Alberta Miller Secretary of State State Capitol Building Santa Fe, New Mexico

QUESTION

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1. Is there a specific time for candidates to circulate Nominating Petitions, and if so, what is the earliest date a candidate may circulate his petition?
2. Must an individual attempt to secure his name on the primary election ballot by means of the pre-primary nominating conventions, as a prerequisite to attempting to obtain his name on the primary election ballot by the petition method?

CONCLUSIONS

1. The earliest date such petition may be circulated is that day upon which the last preceding general election results were officially certified by the State Canvassing Board.
2. No.

OPINION

{*308} ANALYSIS

Section 3-11-7, N.M.S.A., 1953 Compilation authorizes any individual desiring to become a candidate {*309} for any political office of a party participating in the primary election, and who has not been nominated by a pre-primary nominating convention, to have his name placed upon the primary election ballot if he files a declaration of candidacy and the requisite nominating petitions. Such Section provides in applicable part, as follows:

"A person desiring to become a candidate of any political party participating in the primary election for any office, the candidates for which have been nominated by certificate of designation by convention, and who has not been so nominated by such convention, **may during the period commencing at 9:00 A.M. of the first Tuesday in March of each even numbered year and ending at 5:00 P.M. on the third Tuesday of March thereafter . . . file a declaration of candidacy . . .**

At the time of filing such declaration, such candidate shall file therewith a petition for nomination signed by qualified electors who are members of his political party. . . The petition shall be signed by a number of qualified electors resident in one-half of the counties in the state equal to at least three percent of the votes cast for the office for which said petition is being circulated, at the last general election held for such office, in each of the counties wherein such petition is circulated. . . ." (Emphasis supplied).

The governor of New Mexico is required under Section 3-11-15, N.M.S.A., 1953 Compilation, to issue a public proclamation on the first Monday in February of each even numbered year, calling a primary election to be held in each county and precinct in the State of New Mexico on the first Tuesday after the first Monday in May of such even numbered year. This Section provides that:

". . . such proclamation shall also contain the date on or before which the designations by convention and declarations and nominating petitions of candidates for such nominations shall be filed and the office wherein such designations by conventions and declarations and petitions shall be filed, in order to entitle the candidate for such nomination to have his name printed upon the official ballot of his party of such primary."

As seen from the above statutory provisions the deadline for filing nominating petitions is clearly established; however, no express beginning date for the circulation of nominating petitions is set out by statute.

Article XX, Section 9 of the State Constitution requires the county canvassing board, immediately after an election, to certify the number of votes received by each candidate for office to the State Canvassing Board. The State Canvassing Board then declares the result of the election.

Section 3-6-19, N.M.S.A., 1953 Compilation, requires the State Canvassing Board to meet on the second Monday after each general election and proceed to canvass and declare the result of the general election and issue proper certificates of election.

Section 3-6-23.1, N.M.S.A., 1953 Compilation, sets out that the Election Code is to be liberally construed so as to accomplish its general purposes.

Although the statutes are silent *{*310}* as to what is the earliest possible date upon which a person can begin circulating nominating petitions in order to secure his name upon the primary election ballot, it is our opinion that impliedly under the liberal spirit of the act the earliest possible date to circulate petitions would be that day upon which the last preceding general election results were officially certified by the State Canvassing Board. From such date until 5:00 P.M. on the third Tuesday of March of each even numbered year thereafter, such nominating petitions and declarations of candidacy may be filed as provided in Section 3-11-7, N.M.S.A., 1953 Compilation.

In your second question, inquiry is made as to whether an individual must first attempt to secure his name on the primary election ballot by means of the pre-primary nominating convention before seeking signatures upon nominating petitions.

As stated in 29 C.J.S. "Elections," Section 111, at page 149:

"A primary election law should be liberally construed to effectuate its remedial purposes, but it has been held that the interpretation should not go beyond the letter of the statute so as to restrict unduly the powers of the political party." (Emphasis added).

Similarly, the New Mexico Supreme Court has enunciated the rule in **State ex rel. Read v. Crist**, 25 N.M. 175, 179 P. 629, that in construing election statutes no construction of constitutional or statutory provisions is to be indulged which will defeat or unduly restrict or obstruct the free exercise of the elective franchise unless such is compelled by the strict letter of the law.

Since no express requirement makes mandatory that an individual first attempt to secure nomination by means of the pre-primary nominating convention prior to securing nominating petitions, under the rules stated above we do not believe that such strict prerequisite can be said to exist. To adopt such construction would in some cases drastically reduce the time within which an individual could circulate nominating petitions and in part nullify such procedure. Section 3-11-7 states the petition must be filed by 5:00 P.M. on the third Tuesday of March. Section 3-11-5 sets out that all preprimary conventions must be had on or before the first Tuesday of March of each even numbered year. It may readily be seen that if a construction were effected requiring an attempt to secure nomination by the convention method prior to endeavoring to circulate petitions in some instances insufficient time would be left to obtain the necessary signatures.

It is therefore our opinion based upon a careful reading of the above stated statutes that it is not a necessary requirement that a person first endeavor to secure his name upon the primary election ballot by means of the pre-primary nominating convention prior to circulating nominating petitions to secure his nomination by the petition method.

By: Thomas A. Donnelly

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