

Opinion No. 64-105

August 7, 1964

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

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

QUESTION

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If a candidate selected by a political party at the May primary election subsequently declines to run in the general election, may the appropriate political party central committee certify a person as the candidate of that party in the 1964 general election who has only been affiliated with the party since July of this year?

CONCLUSION

No.

OPINION

ANALYSIS

Involved in your question is Section 3-11-6, N.M.S.A., 1953 Compilation (P.S.) which provides as follows:

"No person shall become a candidate for nomination for any office who has changed his party affiliation within one year prior to the issuance of the proclamation herein required by the governor of the state of New Mexico.

No person shall become a candidate for nomination of any political party, except the party with which such person shall be shown to be a member by his affidavit of registration, nor unless such affiliation shall have been shown by the registration books of the county clerk of the county wherein such candidate resides, for a period of at least one year next preceding the date of the proclamation of such primary election." (Emphasis added)

An identical statute, which formerly appeared as Section 56-809, 1941 Compilation, as amended in 1943, was attacked in **Roberts v. Cleveland**, 48, N.M. 226, 149 P. 2d 120 as being unconstitutional.

There too the situation involved a prospective candidate in the general election, not the primary election. The person bringing the action had presented his declaration of

candidacy for the office of congressman as the candidate of the Republican party at the ensuing **general** election.

The secretary of state refused to accept this declaration for filing since the person seeking to file had changed his party affiliation within twelve months prior to the issuance of the proclamation by the governor calling the primary election.

The aggrieved party contended that the statute was unconstitutional because it placed qualifications on the right to hold office in addition to those contained in the constitution, and because it denied him the equal protection of the laws.

The court ruled against these contentions holding that the statute did not restrict the right to be a candidate for office but merely the right to be the designated candidate of a particular political party.

The court discussed the closed primary system which we then had in New Mexico, and which we still have, and said that the legislature, in order to carry out the idea of a closed primary, may provide for a certain period of party affiliation, basically as a test of sincerity and substantiality of declared party affiliation.

This decision is annotated and discussed in 153 ALR 635, wherein it is cited as standing for the principle that "because none but party members may vote in its primary election it necessarily follows that none but party members can be its candidates." **State ex rel. Murphy v. Graves**, Ohio, 109 N.E. 590.

When a vacancy which occurs after the primary election is filled by the political party central committee, state or county as the case may be, pursuant to Section 3-11-24, N.M.S.A., 1953 Compilation (P.S.), the person certified to fill such vacancy is the **party** nominee. And in this state he is to be given a certificate of nomination as are other party nominees.

In *Wilson v. Gonzales*, 44 N.M. 559, 106 P. 2d 1093, our Supreme Court said "The making and filing of a certificate of nomination is a condition precedent to the printing of a candidate's name on the official ballot."

Such being the case, the person whom the appropriate political party committee is going to name to fill a vacancy on the general election ballot is a candidate for nomination of a political party and must, therefore, meet the requirements of Section 3-11-6, *supra*.