

Opinion No. 64-25

March 6, 1964

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

TO: Mr. James W. Musgrove, Assistant District Attorney, 112 N. Behrend, Farmington, New Mexico

QUESTION

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When two or more candidates for different officers but whose names will appear on the same ballot are the same or are so similar as to tend to confuse the voter as to their identity, is the occupation and address of each such candidate to be printed under such candidate's name on the primary ballot?

CONCLUSION

Yes.

OPINION

ANALYSIS

As we understand it, a James M. Durrett filed on the Democratic ticket for county commissioner for San Juan County and a James H. Durrett filed on the Democratic ticket for state representative, district 2, for San Juan County.

The "similar name" statute provides as follows (Section 3-11-23, N.M.S.A., 1953 Compilation (P.S.)):

"In the preparation of the primary ballots herein provided for, if it appears that the name of two or more candidates for any office to be voted upon at said primary are the same or are so similar as to tend to confuse the voter as to their identity, the occupation and post office address of each of such candidates shall be printed in the English and Spanish languages immediately under such candidate's name on said primary ballot."

It is our opinion that had the legislature intended this provision to apply only to candidates running **for the same office** it could easily have said just that. This it did not do.

There is no question whatever but that the above-quoted statute is remedial in nature and should receive a liberal construction. **State ex rel. Montoya v. Fiorina**, 70 N.M. 64,

370 P. 2d 206; Dicennial Digest, Statutes, § 236. As our Supreme Court said in the **Montoya** case:

". . . The clear legislative intent - . . . is to benefit the voters by placing the names of the candidates upon the ballot in a clear and unambiguous manner so that each voter may cast his or her vote intelligently. . ."

It takes no particular imagination to recognize that when two or more candidates with the same or very similar names appear on the same ballot this is going to create voter confusion whether the candidates are running for the same or a different office. A voter may favor or disfavor a person of that name, but he may find it necessary to vote for or against both such candidates in order that his voting desire is achieved. Consequently, it may well be that use of the similar name statute is more important when the candidates are running for different offices than when they are running for the same office. In the former situation two races rather than just one are affected by any voter confusion.

It will also be noted that the similar name statute deprives no one of a place on the ballot. It simply requires that when there are two or more candidates with the same name or names so similar as to tend to confuse the voter, their occupations and post office addresses must be incorporated on the ballot. It is the considered opinion of this office that a bona fide candidate could have no legitimate objection to such a requirement.

The occupation which is to be listed on the ballot is, of course, the candidate's present principal occupation.

ADDENDUM TO:

Opinion No. 64-25

March 6, 1964

To:

Mrs. Alberta Miller

Secretary of State

Santa Fe, New Mexico

QUESTION

When two or more candidates for **different offices** but whose names will appear on the same ballot are the same or are so similar as to tend to confuse the voter as to their

identity, is the occupation and address **of each candidate for each such office** to be printed under the candidate's name on the primary ballot?

CONCLUSION

Yes.

ANALYSIS

The case of **State ex rel. Montoya v. Fiorina**, 70 N.M. 64, 370 P. 2d 206, makes it clear that the purpose of the "similar name" statute (Section 3-11-23) is to prevent voter confusion.

It is, therefore, the opinion of this office that when two or more candidates with the same or similar names are running for either the same or different offices and whose names will appear on the same ballot, the occupation and address of **each candidate for the office or offices involved** is to be printed on the ballot.

To construe Section 3-11-23, *supra*, in any other manner would promote voter confusion rather than alleviate it. Again we say that bona fide candidates can raise no legitimate objection to the printing of their occupations and addresses on the ballot.