

Opinion No. 66-31

March 14, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. E. H. Williams, Jr., District Attorney, Third Judicial District, Second Floor Court House, Las Cruces, New Mexico

QUESTION

QUESTIONS

1. Two individuals have filed their declaration of candidacy in Dona Ana County for Legislative posts. The County Clerk's file reflects that these individuals registered in Dona Ana County for the first time within one year preceding the Governor's proclamation. It is further alleged by these individuals in their furnishing proof as to the fact that prior to their registration in Dona Ana County within the one year period, that these candidates had been registered in other counties in New Mexico and that there has been no change of Party affiliation but merely a change of residence within the year immediately preceding the Governor's Proclamation and, therefore, it was necessary for them to change their county of registration. Upon receipt of satisfactory proof of their prior registration, are these persons eligible to have their names placed on the ballot?
2. An individual has filed his declaration of candidacy. This individual celebrated his 21st birthday on February 11, 1966, and is now registered as a voter. He has not been registered as a voter or a member of any political party within the one year period, but he could not have done so due to his age. Is this individual eligible to have his name placed on the primary election ballot?
3. This individual presently holds office as a Justice of the Peace and has filed his declaration of candidacy for re-election as Justice of the Peace. The County Clerk of Dona Ana County purged or cancelled the registration of this individual on February 14, 1965, by reason of the fact that said Justice of the Peace had not voted in Dona Ana County in either of the last two elections, although he did vote in Dona Ana County in the primary election of 1964. The Clerk further had received a letter from this individual advising that he was a registered voter in Chaves County, New Mexico. A check with the Chaves County Clerk reveals that this individual voted there in the General Election of 1960 and that he has been purged as a registered voter by the Chaves County Clerk. Is this individual eligible to have his name placed on the primary ballot?
4. An individual has filed his declaration of candidacy for the post of County Commissioner of Otero County. In his declaration of candidacy he filled in the blank denoting precinct number with District 2 - Tularosa, a county commission district. District 2 is the appropriate district in which this individual would be a candidate for county

commissioner and it would appear that he would be entitled to remain on the ballot; however, I would like your opinion in this regard. Is this sufficient compliance with Section 3-11-7 and thus a proper declaration of candidacy?

CONCLUSIONS

1. Yes.
2. No.
3. No.
4. Yes.

OPINION

{*39} ANALYSIS

The answer to your first question is yes if these candidates will have resided in the county ninety days and in the precinct thirty days next preceding the election. The requirement that a prospective candidate must have resided in the state for one year and must have been a member of the particular political party for one year preceding the governor's primary election proclamation, does not mean that he must have resided in the same New Mexico county for one year prior to the election. See Sections 3-1-1, 3-2-21 and 3-11-6, N.M.S.A., 1953 Compilation (P.S.). Any other interpretation would nullify the ninety-day provision and convert the county residence requirement to one year. Clearly this is not contemplated by the Constitution or the statutes. Article VII, Sections 1 and 2, New Mexico Constitution.

Prior to 1963, our election laws (Section 3-11-43, Laws 1955, Chapter 218, Section 8) provided that the registration books must disclose that a candidate must have been affiliated with the party in which he seeks office for not less than twelve months prior to the issuance of the primary proclamation **or since his initial registration to vote in the state of New Mexico.** In 1963 this provision was repealed and the section now dealing with who may become candidates is compiled as Section 3-11-6, N.M.S.A., 1953 Compilation (P.S.) As reenacted the underlined portion above was deleted. This indicates a clear legislative intent to make no exception to the one-year requirement, and hence Opinion No. 60-42 which was based on the old law is no longer applicable.

Your third question also involves Section 3-11-6, *supra*, as well as Section 3-2-21, N.M.S.A., 1953 Compilation. The latter section provides that when a registered voter has not voted at the last two preceding **general elections**, as shown by the notation of election officials on his affidavit of registration, the board of registration shall cancel such affidavit of registration with a notice to this effect to be mailed to the elector at least ten days prior to actual cancellation.

Since the person in question has been purged in both Dona Ana County and Chaves County, he has not been registered with either political party for the necessary time period as prescribed by Section 3-11-6 and there is no way that he can now get in the necessary period of time prior to the 1966 primary election on May 3 to have his name placed on the ballot.

Section 3-11-16, N.M.S.A., 1953 Compilation (P.S.), the section dealing with the filing of declarations of candidacy for legislative, judicial district, county and **precinct** offices, provides that the declaration of candidacy shall be in **substantial compliance** with the form set out in Section 3-11-7, N.M.S.A., 1953 Compilation (P.S.). That form contains a line for designation of the candidate's precinct. This particular person, a candidate for county commissioner, listed his county commission district number on this line. This, we believe, is substantial compliance with Section 3-11-16, *supra*, and thus his name should be listed on the primary election ballot.