

## **Opinion No. 66-77**

June 17, 1966

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

**TO:** Jane Springer, Bernalillo County Clerk, County Court House, Albuquerque, New Mexico

### **QUESTION**

#### **QUESTIONS**

1. Must a write-in candidate contact the county clerk before the election notifying the clerk of his or her intention to be a write-in candidate?
2. Is it permissible in a write-in campaign to use printed stickers?
3. If there are candidates from both parties running for a particular office, is it permissible for a voter to cast his ballot for a write-in candidate?
4. If there is no party candidate running for a particular office, is it permissible for a voter to cast his ballot for a write-in candidate?
5. What is the minimum number of votes necessary to be elected as a write-in candidate?
6. What is the procedure for counting write-in votes?
7. If a write-in candidate wins an election, must he or she then pay a filing fee?
8. Must a write-in candidate be registered with a particular party at least one year prior to the election?

#### **CONCLUSIONS**

1. No.
2. Yes.
3. Yes.
4. Yes.
5. More votes than any other candidate for the particular office.

6. See analysis.

7. No.

8. No.

## **OPINION**

### **{\*100} ANALYSIS**

1. A write-in candidate does not have to contact the county clerk prior to election notifying the clerk of his intention to be a write-in candidate. It must be remembered that the privilege of being able to write in the name of any person for any office in general elections is actually one given to the voter. This is clear from the language used in Sections 3-3-6, 3-4-2 and 3-4-17, N.M.S.A., 1953 Compilation.

Section 3-3-6, *supra*, provides that:

" . . . nothing herein shall prevent any voter from writing on his ballot the name of any person for whom he desires to vote for any office in the manner hereinafter provided, and such vote shall be counted the same as if such name were printed on the ballot."

Section 3-4-2, *supra*, setting forth the requirements for a voting machine provides that such machines must:

" . . . permit a voter to vote for any person for any office, whether or not the name of such person appears upon a ballot label as a candidate for . . . election."

Section 3-4-17 also permits the voter to write in the name of any person for whom he desires to vote.

2. This office held in Opinion No. 64-104 that printed stickers can be used for write-in candidates. In Opinion No. 64-131, we held that rubber stamps bearing a write-in candidate's name may also be used. However, you should note the admonition in the latter opinion that such stickers or rubber stamps cannot be made available to the voter within fifty feet from the polling place; otherwise it is electioneering. Section 3-3-20 (20), N.M.S.A., 1953 Compilation.

3. In answer to your third question, write-in votes are permissible even though both parties do have candidates for the particular office. Any other result would, in most cases, nullify the write-in privilege -- this because in most instances both parties do have candidates for the various offices.

4. As we pointed out in Opinion No. 62-82, write-in votes are allowed in the general election for an office when no candidate was nominated for that office in the primary

election. We further noted that "where no candidate appears on the ballot the write-in vote becomes of greater importance."

5. The minimum number of votes necessary for a write-in candidate to be elected is, like in any other case, a number greater than that received by any of the other candidates for the particular office. We have instances in this State where a write-in candidate has been elected with one or two votes (since neither of the major political parties had a candidate for the particular office).

6. Your third question relates to the procedure for counting write-in votes. In the case of paper ballots they are, of course, counted in the same manner that votes for other candidates are counted. We stated as follows in Opinion No. 62-82 relative to counting write-in votes when voting machines are used:

"The write-in is recorded on a paper roll which is in the machine and numbered to correspond with the office columns. When the voter pulls the lever which records his vote, the roll turns so it is blank for the next voter. After the election the rolls are removed from the machine, the votes are tabulated and the results placed on the return sheets"

Of course, the roll must be unrolled to tabulate any write-in votes and this does not violate the secrecy of the ballot.

7. There is no requirement that a winning write-in candidate pay a filing fee. In the absence of such a legislative requirement, we see no authority for imposing one.

{\*101} 8. So long as a person meets the requirements of a qualified elector, which are set forth in Article VII, Section 1, New Mexico Constitution, he or she can be a write-in candidate in a **general** election. Article VII, Section 2, New Mexico Constitution. A **write-in** candidate is not running as a candidate of any political party. Thus the answer to your last question is in the negative. See **Roberts v. Cleveland**, 48 N.M. 226, 149 P.2d 120 and Opinion No. 64-105.