

Opinion No. 68-80

August 6, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mrs. Ernestine D. Evans Secretary of State Legislative Executive Building Santa Fe, New Mexico

QUESTION

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Does Section 3-11-10, N.M.S.A., 1953 Compilation (P.S.), give a person the right to register and vote in the primary election even though he will not have been a resident of New Mexico for a year until after the date of the primary election?

CONCLUSION

No.

OPINION

{*130} ANALYSIS

The identical problem was raised in Opinion of the Attorney General No. 3550, dated June 18, 1940. It was said that:

[A] person who will not be 21 years of age at the next succeeding primary election is not entitled to be registered before the primary election, even though he will be 21 years of age at the time of the general election. He will simply have to wait until after the primary in order to be registered.

Opinion No. 3550, supra, was interpreting Section 1, Chapter 152, Laws of 1939. This provision has remained in effect and has undergone no relevant changes since that time. It is now Section 3-2-49, N.M.S.A., 1953 Compilation and provides:

Registration required. -- No person shall vote at any general, special, primary, or municipal election unless registered as provided by the laws of the state of New Mexico and unless otherwise qualified as herein provided; and no ballot of any unregistered or otherwise unqualified elector or person, shall be cast, counted or canvassed. **The provisions of this section shall be mandatory.** No person shall be registered unless at the next ensuing election he will have the qualifications of an elector as hereinafter provided and registers as provided by the laws of New Mexico. (Emphasis added)

In this provision the reference to "ensuing election" in the last sentence refers to the types of elections listed in the first sentence. Thus, on the face of Section 3-2-49, a person can only register to vote before the primary if he will meet the age and residency requirements for voting which are imposed by the Constitution and statutes prior to such primary election.

Section 3-11-10, N.M.S.A., 1953 Compilation (P.S.) provides:

Persons entitled to vote. -- At any and all primary elections held in the state of New Mexico, or in any subdivision thereof, under the provisions of this act [3-11-1 to 3-11-35], all qualified registered electors of the state belonging to any political party participating in such primary election entitled to vote at the next ensuing general election shall be entitled to and shall have the right to vote, and no such qualified registered elector of the state shall be denied the right to freely vote or in any manner hindered in freely voting at such primary election by reason of race, descent or religion or by reason of the lack of ability to read, write or speak any language.

{*131} This provision has no effect upon the conclusion reached above reaffirming the decision in Opinion No. 3550, supra. The same statute was on the books in 1940 as Section 3, Ch. 2, Laws of 1938 (S.S.), and has not changed since that time.

This provision accords the franchise in primaries to persons who are "**qualified registered**" electors entitled to vote at the next ensuing general election. A person who is not yet qualified to vote in the general election though registered could not exercise his franchise in the primary election.

The intent of Section 3-2-49, supra, was to set up qualifications and timing for the physical act of registration. Section 3-11-10, supra, is not contradictory. Rather, it adopts those qualifications set forth in Section 3-2-49, supra, and defines the franchise in primary elections by those qualifications.

Therefore, a person who will not have met both the age and residency requirements established by law, by the time of the coming primary election, is not entitled to be registered before said primary, even though he will have met these requirements by the time of the general election. Such registration cannot occur until after the primary.

By: Roy G. Hill

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