

## Opinion No. 69-40

May 8, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Gary O'Dowd, Deputy Attorney General

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

### QUESTIONS

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Will it be necessary to hold an election in a county or legislative district when only one candidate filed for the office of delegate to the constitutional convention?

#### CONCLUSION

Yes.

### OPINION

#### {\*61} ANALYSIS

Chapter 134, Laws of 1969 provides for the calling of a constitutional convention. Under this 1969 enactment of the legislature, seventy delegates are to be elected as delegates to the constitutional convention, one from each legislative district in this State. On May 1, 1969, candidates for the position of constitutional delegate filed their declaration of candidacy. In some districts only one {\*62} candidate filed for the office of delegate to the constitutional convention. Section 8 D of Chapter 134, Laws of 1969 prohibits voters from voting for write-in candidates. Chapter 134, Laws of 1969 also provides that candidates may not withdraw from the election after May 8, 1969. It would therefore appear that a candidate who has filed for the position of delegate to the constitutional convention in a district where only one candidate has filed will be the delegate from that district unless he should withdraw before May 9, 1969. It is contended that no good purpose will be served by holding an election in a district where only one candidate has filed for the office of delegates to the constitutional convention. We cannot agree with this contention.

The election of delegates to the constitutional convention is to be conducted and canvassed in substantially the same manner as general elections are conducted in this State. Section 12, Chapter 134, Laws of 1969. General elections are now conducted and canvassed pursuant to the Election Code also enacted in 1969. See Chapter 240, Laws of 1969. In a general election the voter with the largest number of votes is declared to be the winner. See Article VII, Section 5, New Mexico Constitution and

Sections 3-12-52 A, 3-13-14 and 3-13-17 of the Election Code, Chapter 240, Laws of 1969. Nowhere in the Election Code can we find a provision allowing certification of the results of a general election without an election actually having been held. It is concluded that before the results of the election of constitutional delegates can be certified an election must actually be held.

The above conclusion is supported by the provisions of Chapter 134, Laws of 1969. Section 4 D(1) of Chapter 134 provides that if there are no declarations of candidacy filed in a county, the board of county commissioners shall nominate a candidate. Certainly this candidate will be the delegate of the district, however, the legislature did not provide that an appointed candidate would be the delegate of the district. The legislature could have easily so provided. Such a provision is found in the Municipal Code.

In municipal elections in municipalities following the commissioner-manager form of municipal government, if no more than one candidate qualifies for an office to be filled, the candidate is to be declared elected, without a vote, upon certification by the municipal clerk. See Opinion of the Attorney General No. 68-20, issued February 12, 1968. It is the opinion of this office that a similar provision would have to be found in Chapter 134, Laws of 1969 or Chapter 240, Laws of 1969, the Election Code, before an unopposed candidate for delegate to the constitutional convention could be certified as elected without an election.

Last of all it should be pointed out that in an election for delegates to the constitutional convention, boards of county commissioners may consolidate voting divisions to effect economies. See Section 12, Chapter 134, Laws of 1969. If there is only one candidate, it is suggested that probably only one voting division will be necessary in such a county or district.