

Opinion No. 70-14

February 4, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: The Honorable Stephen C. Helbing New Mexico State Representative Legislative-Executive Building Santa Fe, New Mexico 87501

QUESTIONS

FACTS

A resident of a neighboring state moved to New Mexico in August, 1968. He first registered to vote in New Mexico in November, 1969. His present political party registration in New Mexico dates from November, 1960; until August, 1968, the individual in question was a registered member of the same party in the state of his former residence. The individual described now contemplates becoming a candidate for nomination to the Legislature in the 1970 primary election.

QUESTIONS

Do the above-cited facts satisfy the terms of Section 3-8-17 (B), N.M.S.A., 1953 Compilation, which require that persons seeking nomination by a political party must have been registered members of that party for the full year immediately preceding the primary election filing date?

CONCLUSION

No. Under the circumstances described above, the individual may not seek nomination in the 1970 primary election.

OPINION

{*24} ANALYSIS

The Primary Election Law, Sections 3-8-9 through 3-8-32, N.M.S.A., 1953 Compilation, determines those persons eligible to seek nomination for most elective offices in this state, and prescribes the manner in which nominations are to be sought. Sections 3-8-17 of the Primary Election Law declares:

"A. No person who has changed his party affiliation within one [1] year prior to the filing date for the primary election shall become a candidate for nomination for any office.

"B. No person shall become a candidate for nomination by a political party **unless his record of registration shows his affiliation** with that political party for a period of at

least one [1] year next preceding the filing date for the primary election." (Emphasis added.)

It should be noted that the terms of this Section go beyond simply requiring party affiliation for a given period. The law explicitly states the sole manner in which that affiliation must be shown for purposes of participation in a particular party's primary election. The "declaration of candidacy" form set forth in Section 3-8-24 repeats the requirement that affiliation must be sworn by the person's current affidavit of voter registration. The statutory requirements here discussed are directed only to participation in the primary election of a political party, and should not be understood as limiting the right of any person, qualified under Article VII, Section 2 of the New Mexico Constitution, to hold elective office. **Roberts v. Cleveland**, 48 N.M. 226, 149 P.2d 120 (1944); c.f., **Gibbany v. Ford** 29 N.M. 621, 225 P. 577 (1924).

Though participation in primary elections is open only to persons registered as party members, not all political parties are required to nominate their candidates by primary election balloting. Section 3-8-1, N.M.S.A., 1953 Compilation. Moreover, any qualified person may be regarded as a potential write-in candidate, and is entitled to receive write-in votes at the general election. Section 3-12-36, N.M.S.A., 1953 Compilation. It would thus appear that the restriction imposed by Section 3-8-17 is not an improper limitation on the right to hold office, or to participate in the general election, but is simply a restriction on the privilege of participating in a party primary election.

{*25} Under the circumstances present in this question, the matter of the prospective candidate's party affiliation in the state of his former residence is of no legal consequence. During the period between August, 1968 and November 1969, the individual was not registered as a voter in the state, and consequently had not established a party affiliation that would satisfy the specific terms of Section 3-8-17 (B). Only upon registration as a voter and as a member of his political party, in November, 1969, did the individual achieve the affiliation required by law.

The filing date for the 1970 primary election will be in April, 1970, Section 3-8-21, N.M.S.A., 1953 Compilation. On that date, the prospective candidate will not have been a registered member of his party for one year immediately prior to the filing date, and therefore may not become a primary candidate for his party's nomination to the Legislature.

By: Richard J. Smith

Assistant Attorney General