

## **Opinion No. 70-17**

February 11, 1970

**BY:** OPINION OF JAMES A. MALONEY, Attorney General

**TO:** Ernestine D. Evans Secretary of State Legislative-Executive Building Santa Fe, N.M. 87501

### **QUESTIONS**

#### QUESTIONS

1. May "ticket designations" be placed after the names of candidates in municipal elections under the commission-manager form of government?
2. What is the proper method of determining the order in which names of candidates for office or position will appear on the ballot in municipal elections?

#### CONCLUSIONS

1. Yes.
2. See analysis.

### **OPINION**

#### **{\*27} ANALYSIS**

Section 14-8-12 B., N.M.S.A., 1953 Compilation, enacted in 1967, provides, in part:

"Any election for commissioners under the commission-manager form of government shall be nonpartisan and the names of all candidates for office shall be listed on the ballot without party or slate designation . . ."

In 1969, the Legislature enacted Ch. 270, Laws of 1969, compiled in the Election Code as Section 3-10-10.1, N.M.S.A., 1953 Compilation (p.p.). It provides in part:

"In any municipal or school election required by law to be a nonpartisan election, the names of all candidates shall appear on the ballot {\*28} without any reference to or designation of a political party. Notwithstanding any other provision of law, nothing shall preclude any group of persons from filing a nonpartisan ticket of candidates under a distinctive designation or name of the group's own choice."

This new law applies to "any municipal . . . election required by law to be a non-partisan election." An election for commissioners under the commission-manager form of government is such an election. § 14-8-12 B., supra.

Section 3-10-10.1, supra, also provides for a non-partisan ticket in any municipal election, "notwithstanding any other provision of law." It is apparent that this language necessarily supercedes that part of Section 14-8-12 B. prohibiting "slate designation."

It is, therefore, our opinion that non-partisan ticket designations are now permitted in commission-manager elections, subject to one possible caution. It is conceivable that our Supreme Court would hold that Section 3-10-10.1 violates the provisions of Art. IV, Sec. 18 of our Constitution prohibiting amendment of statutes by reference. We think, however, this is unlikely. **Ballew v. Denson**, 63 N.M. 370, 320 P.2d 382 (1958).

Ticket designations have been permitted for mayor-council municipalities for some time. Opinion of the Attorney General, No. 65-238, issued December 14, 1965. This is now expressly confirmed by Section 3-10-10.1, supra. In our opinion the possible constitutional infirmity as to commission-manager elections is not applicable to this part of Section 3-10-10.1.

Question 2 asks how the municipal clerk is to determine the order in which the names of the candidates for municipal office or position will appear on the ballot. Section 14-8-12 A. provides:

". . . The order in which the names of candidates are listed on the ballot shall be determined by lot."

Section 14-8-12 B. provides:

". . . The order on the ballot of the names of the candidates for each office and position shall be determined by lot."

In elections where no group of candidates has filed under a non-partisan ticket designation, there is no problem. A candidate's place on the ballot is determined under each office or position by lot in a drawing announced and held by the municipal clerk. Is this procedure different where a non-partisan ticket has filed?

Prior to the enactment of Section 3-10-10.1, supra, the answer to this question was "no." All candidates for each office or position were placed on the ballot by lot with a ticket designation noted after the names of those on a non-partisan ticket. Opinion of the Attorney General, No. 65-238, supra. Does Section 3-10-10.1, supra, require a different result?

In our opinion it does not. The pertinent language of Section 3-10-10.1, supra, is:

". . . The names of all candidates of the same nonpartisan ticket shall be printed on the ballot under such nonpartisan ticket designation. The placing of the nonpartisan ticket on the ballot shall be determined by lot. Straight party levers shall not operate in any municipal or school elections."

In enacting this provision, it is apparent that the Legislature has not attempted to deal comprehensively with the question of position on the ballot in municipal elections. (Cf. §§ 3-8-30, 3-10-8 A. (6), supra, relating to primary elections; §§ 3-10-3 B., 3-10-10, 3-10-11 relating to general elections). We must, therefore, assume that the Legislature intended Section 3-10-10.1 to be construed and applied in harmony, where possible, with those parts of the Municipal Code relating to elections ( §§ 14-8-1, et seq.).

We think the reasoning of our former opinion which harmonizes various provisions of the municipal code is equally applicable at this time. Section 3-10-10.1 makes no specific requirement of nor provision for the relative placement by lot of an entire nonpartisan ticket as against those filing without designation for an office for {29} position. Further, there is no provision for an entire ticket or tickets to be listed first, last or in the middle. And, finally, the section specifically forbids the operation of "straight party levers." This, of course, is one of the main reasons for placing an entire ticket together either on a voting machine or a ballot. The requirement evidences an intention that, in municipal elections, candidates for each office or position be listed and voted on separately.

It is our opinion and we so advise that the placing on the ballot of all candidates in municipal elections must be determined by lot under each office and position without regard to ticket designations and, further, that candidates on non-partisan tickets, who have listed a ticket designation on their declarations of candidacy, are entitled to have that designation follow their names on the voting machine and ballot.

By: Justin Reid

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