

Opinion No. 70-47

May 5, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: The Honorable David M. Salman New Mexico State Representative Buena Vista, New Mexico

QUESTIONS

FACTS

A resident of Mora County reached his twenty-second birthday in October, 1969. In February, 1970, that individual registered to vote for the first time, and indicated on his affidavit of registration his affiliation with a political party. On April 6, 1970, the individual filed as a candidate for his party's primary election nomination to a Mora County office.

QUESTION

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 primary election 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

{*79} ANALYSIS

A similar question was answered by this office in Attorney General Opinion No. 70-14, issued February 4, 1970. That opinion determined that the terms of Section 3-8-17 (B.), N.M.S.A., 1953 Compilation, are absolute and unequivocal in requiring twelve months' registration as a party member of all persons seeking their parties' nomination in the primary elections. The pertinent portion of the Primary Election Law declares:

"A. No person who has changed his party affiliation within one [1] year prior to the filing date of 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."

It will be observed that the statute provides a specific method for the showing of party affiliation. That method is by reference to the individual's voter registration record. There is no statutory method whereby affiliation with a political party may be accomplished, within the meaning of Section 3-8-17, **supra**, except by the process of indicating one's affiliation on the affidavit of voter registration. **Roberts v. Cleveland**, 48 N.M. 226, 149 P.2d 120 (1944); **Gibbany v. Ford**, 29 N.M. 621, 225 P. 577 (1924). The precise question at hand has been twice litigated before the supreme court of a neighboring state, and the result has been identical to that reached herein. **Spain v. Fischahs**, 143 Colo. 464, 354 P.2d 502 (1960); **Anderson v. Kilmer**, 134 Colo. 270, 302 P.2d 185 (1956).

It is to be further observed that former provisions of New Mexico law permitted an individual to satisfy the party affiliation requirement by having been a registered member of the party whose nomination he seeks since the date of his original registration, regardless of how long a period that may have been. New Mexico Laws of 1955, Ch. 218, § 8. In 1963, this provision was repealed, and the statute governing the qualifications of primary candidates was re-enacted substantially in its present form. New Mexico Laws of 1963, Ch. 317, § 6. It is thus apparent that the Legislature intended to eliminate from qualification those persons with less than twelve months' actual registered party affiliation, even though they may have been party affiliates since their initial voter registration.

{*80} Since the person in question has not been a registered member of his party for a full twelve months immediately preceding April 6, 1970, he is not a qualified primary candidate and should not appear on his party's primary election ballot. A copy of this opinion will be filed with the Office of the Secretary of State, in order that that officer may take the appropriate action under the Primary Election Law, Sections 3-8-9 through 3-8-32, N.M.S.A., 1953 Compilation.

By: Richard J. Smith

Assistant Attorney General