

Opinion No. 70-75

September 3, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

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

QUESTIONS

QUESTION

In view of the ruling of the Supreme Court of the State of New Mexico given earlier this afternoon in Cause No. 9120, Peoples' Constitutional Party, et al, versus Ernestine D. Evans, which denied my motion for supersedeas and stay, I would like to have your opinion on the following question:

What requirements will any minor political party have to meet in order to have their candidates' names placed on the November 3, 1970 General Election ballot?

CONCLUSION

See Analysis.

OPINION

{*127} ANALYSIS

Earlier today the New Mexico Supreme Court, two members of the Court dissenting, in Cause No. 9120 denied your motion for supersedeas and stay of District Court Judge Joe Angel's ruling of August 28, 1970 in Cause No. 41880, District Court, Santa Fe County which held Sections 3-8-2(B), (C) and 3-8-3(C), N.M.S.A., 1953 Compilation, as amended, unconstitutional and enjoined you from enforcing same.

Therefore, the requirements any minor political party will have to meet in order to have their candidates' names placed on the November 3, 1970 General Election ballot are all of those contained in Sections 3-8-1, et seq, Laws of 1969, excepting the above three provisions declared unconstitutional, and the requirements of these three sections are now those contained in the prior applicable statute, which is Chapter 98, Laws of 1959. See **American Independent Party in Idaho, Inc., v. Cenarrusa, Secretary of State**, 442 P.2d 766 (1968); **Preisler v. Calcaterra, et al.**, 243 S.W.2d 62 (Mo. 1951).

For your information and guidance Chapter 98 of the Laws of 1959 provides:

The chairman and secretary of every state political convention shall, not less than forty [40] days previous to the election, certify to the secretary of state the names of all candidates nominated at such convention and the office for which each candidate has been nominated. The secretary of state shall, upon receipt of such certificate, certify the names of such candidates and the office for which each candidate has been nominated, and the political party by which nominated, to the county clerk of each county of the state.

The chairman and secretary of every political convention, where candidates are nominated for district judge or district attorney of districts comprising more than one [1] county, shall, not less than forty [40] days previous to such election, certify to the secretary of state the names of such candidates, the office for which each candidate has been nominated and the political party by which nominated; and the secretary of state shall, upon receipt of such certificate, certify the names of such candidates, the office for which each candidate has been nominated, and the political party by which nominated, to the county clerk of each of the counties comprising such judicial districts respectively.

Each list of candidates for state or district office nominated by a state political convention and subsequently to be certified to the secretary of state, shall bear the signatures and {^{*}128} legal addresses of at least one hundred [100] voters registered in this state as affiliated with the party nominating such candidates; the said signatures shall be in addition to those required of the convention chairman and secretary for certification as provided herein.

The chairman and secretary of every political convention held for the nomination of county officers and members of the legislature shall, not less than thirty [30] days previous to each general election, certify to the county clerk of said county the names of all candidates nominated at such convention, the office for which each candidate has been nominated and the political party by which nominated. If candidates for state, county or district office have been nominated by any political party otherwise than by convention, like certificates of nomination shall be filed with the secretary of state and county clerks respectively within the times herein specified for the filing of certificates of conventions and shall be signed by the chairman and secretary of the state or county central committee of the party by which such candidates have been nominated, and the secretary of state shall in like manner certify such nominations to the county clerks.

Each list of candidates for county or precinct office nominated by a county or precinct political convention and subsequently to be certified to the county clerk, shall bear the signatures and legal addresses of at least twenty [20] voters registered in the county or precinct as affiliated with the party nominating such candidates; the signatures shall be in addition to those required of the convention chairman and secretary for certification as provided herein.

Provided, however, that such requirement as to voter signatures shall not apply to any political party whose gubernatorial candidate at the last preceding general election

received as much as fifteen per cent [15%] of the total vote cast for governor at that election.

But immediately upon the completion of its canvass, the county canvassing board, serving as such at any primary election, shall certify to the county clerk the name of each person nominated, by each political party participating in said primary, as a candidate for each precinct or county office to be filled at the ensuing general election.

Immediately upon the completion of its canvass, the state canvassing board, serving as such at any primary election, shall likewise certify to each county clerk in the state the name of each person who shall have been nominated in said primary, by each of the political parties participating therein, as a candidate for each state office to be filled at the ensuing election, and shall also certify to the county clerk of each county situated within any voting district comprising more than one [1] county, the name of each person who shall have been nominated in said primary by each of the political parties participating therein, as a candidate for each of the offices to be filled at the ensuing general election by the voters of said districts.