Opinion No. 73-49

June 15, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Betty Fiorina Secretary of State State of New Mexico Legislative-Executive Building Santa Fe, New Mexico 87501

QUESTIONS

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The 1973 New Mexico State Legislature enacted provisions relating to Candidacy in Primary Elections and Declaring an Emergency, Chapter 228, Laws of 1973. The following questions relate to this law:

1. Since the law carries an emergency clause and there is no appropriation, what is the extent of our responsibility in providing the forms needed by the state and county candidates?

2. Section 3-8-24.1(C) sets forth requirements for the nominating petition form. In view of the fact that electronic copying machines can either reduce or increase the size of print during the reproduction process, can this office reject forms that have been duplicated on copying machines?

3. Can this office reject forms that do not meet the specifications of the law?

4. Can a candidate circulate and obtain signatures on petitions prior to the year in which an election will be held?

5. Although there is no provision for a date on the signature line in the form, can this office require such information?

6. Please interpret the meaning of the word "etc." as used in Section 3-8-24.1(C).

7. Must absentee ballots cast in the 1970 Primary Election be counted in determining the number of signatures required on petitions for legislative candidates?

CONCLUSION

1. See Analysis.

2. Yes.

3. Yes.

4. Yes

5. No.

6. See Analysis.

7. Yes.

OPINION

*{*96}* **ANALYSIS**

In March, 1972, the United States District Court for the District of New Mexico in **Dillon, et al. v. Fiorina,** No. 9340 Civil, determined that Section 3-8-26(A), N.M.S.A., 1953 Comp., relating to filing fees for candidates for public office, is "unconstitutional as it applies to the office of United States Senator." The three judge District Court stated that the filing fee required by the statute is indistinguishable from the fees struck down in **Bullock v. Carter,** 40 U.S.L.W. 4211 *{*97}* (1972), for violation of the constitutional guarantee of equal protection of the laws.

Pursuant to this decision now on appeal in the United States Supreme Court, the 1973 New Mexico State Legislature enacted Chapter 228, relating to the Election Code; providing for candidacy in primary elections; declaring an emergency. This law replaced the filing fee requirement with a nominating petition for "the office of United States representative, for any office voted upon by all the voters of the state, for a member of the legislature, district judge, district attorney, state board of education or magistrate . . ." Section 3-8-19. Your questions involve interpretations of the law on nominating petitions.

1. Chapter 228, **supra,** fails to specify who is responsible for supplying petition forms, and, as stated in your question, also fails to provide an appropriation. Section 3-8-24.1(B) states that, "[i]n making a declaration of candidacy, **the candidate** shall file a nominating petition which shall be on forms prescribed by law." (Emphasis added) Although this language does not place responsibility for supplying the forms directly on the candidate, it is the most positive statement of such responsibility in the Act. Thus, we are of the opinion that the candidate is responsible for providing his petition forms. However, the Secretary of State **may** provide guidance for the preparation of the forms by supplying sample "forms."

2. As stated above, Section 3-8-24.1(B) provides that "[i]n making a declaration of candidacy, the candidate . . . shall file a nominating petition which shall be on forms prescribed by law."

The subsections following then delineate requirements for the form of the nominating petition. As set forth in the law, the petition "shall be on paper eight and one-half inches wide and fourteen inches long with twenty-five lines spaced three-eights of an inch apart

and numbered one to twenty-five . . ." Section 3-8-24.1(C). Clearly, there is no leeway allowed in the form. Because the requirements of Section 3-8-24.1(B) are mandatory, and all petitions must therefore conform to the requirements, any duplication of such forms must result in forms meeting the specifications of Section 3-8-24.1(B). If reproductions do not meet these specifications, they cannot be accepted as valid petitions.

3. Section 3-8-19 requires that all candidates for the office of United States Representative, any office voted upon by all the voters of the state and for a member of the legislature, district judge, district attorney, state board of education or magistrate, file declarations of candidacy and a nominating petition as prescribed by the Election Code. The Code at Section 3-8-20 names the proper filing officer for these offices as the Secretary of State. The question then arises as to whether the filing officer has discretion in determining the validity of petitions or whether the filing officer merely acts as a depository for the petitions.

Jurisdictions responding to this query have indicated that the officers charged with the duty of carrying out election laws also have the duty of determining whether candidates are entitled to have a place on the ballot. See **Hunt v. Mann,** 136 Miss. 590, 101 So. 369 (1924); **Bare v. Patterson,** 195 P.2d 281 (Okla. 1948); Anno. 89 A.L.R.2d 873; Anno. 72 A.L.R. 290. In our opinion such a rule is sound and logical. For voters finding a ticket or the names of candidates on the official ballot should not be required to determine whether they are entitled to a place thereon, but must be able to safely rely on the action of the officers of the law and on the presumption that they have performed their duty. See also **State ex rel. Palmer v. Miller,** 74 N.M. 129, 391 P.2d 416 (1964).

4. Section 3-8-24.1 provides a form for the nominating petition in which it is stated that the voter signing the petition is nominating a candidate for an office "to be voted for at the primary election to be held on the first Tuesday of June **this year.** . ." (Emphasis added) Whether the inclusion of the words "this year" on the petition form establishes a requirement that the petitions be circulated only during the year of the Primary Election, is the question presented here.

We first note the general rule for the interpretation of primary election laws as stated at 29 C.J.S. "Elections", § 111:

*{*98}* " **A primary election law should be liberally construed to effectuate its remedial purposes,** but it has been held that the interpretation should not go beyond the letter of the statute so as to restrict unduly the powers of the political party." (Emphasis added)

Similarly, the New Mexico Supreme Court has enunciated the rule in **State ex rel. Read v. Crist,** 25 N.M. 175, 179 P. 629, that in construing election statutes no construction of constitutional or statutory provisions is to be indulged which will defeat or unduly restrict or obstruct the free exercise of the elective franchise unless such is compelled by the letter of the law. Opinion of the Attorney General No. 63-139, dated October 21, 1963.

To construe the inclusion of the words "this year" in the nominating petition form as a positive expression of legislative intent to require that petitions be circulated only in the year of the primary election would be to defeat and unduly restrict or obstruct the free exercise of the elective franchise where other interpretations can be found. In our opinion, evidence of such other legislative intent is found in several provisions of the Act under discussion here. First, House Bill 383 (Ch. 228) was enacted with an emergency clause and therefore became effective when the Governor signed the bill. The inclusion of an emergency clause in legislation is usually considered a positive statement of the Legislature's concern with the subject matter of such legislation. It is logical to assume that the emergency clause was added to the law so that candidates could more easily qualify in time for the Primary Election by having petitions signed as early as possible. It is therefore unreasonable to also presume that inclusion of the words "this year" in the petition form precludes circulation of the petitions until the year of the election since such an interpretation would defeat the expeditious handling of petitions. Further justification for such a conclusion is that the form has no provision for a date on the signature line. An indication as to the date a signature is obtained would be essential to enforce a requirement that all signatures be obtained within a given period of time.

We must therefore conclude that the words "this year" in the petition form only refer to the time at which the petition is filed, and not to the time at which petitions are circulated and signed, particularly since the statute provides that a signer of the nominating petition may withdraw his name at any time prior to the filing of the petition. See Section 8. To adopt any other construction of the language in this Act would drastically reduce the time in which an individual could circulate nominating petitions and in part nullify such procedure. Opinion of the Attorney General No. 63-139, **supra.**

5. While it would seem an easy matter to add requirements such as a date on the signature line of the petition form, in our opinion, the exact language set forth in the statute must be followed when forms are printed for circulation.

The reason for such conclusion is that mandatory language precedes the requirement for the form and provides no method whereby optional provisions may be added to the form. It should also be noted that the statute sets forth requirements for the nominating petition specifically and in detail. For these reasons we conclude that the petitions must follow the form set out in the Act. **State ex rel. Van Aken v. Duffy,** 176 Ohio St. 105, 198 N.E.2d 76 (1964); Cf: Section 3-8-24, **supra,** providing for **substantial** compliance with the form set out in the statute. See also **State ex rel. Chatfield v. Board of Elections of Hamilton County,** 76 Ohio St. 93, 197 N.E.2d 797 (1964).

6. Section 3-8-24.1(C) in setting out the form to be followed on nominating petitions indicates the manner in which signature lines are to be printed:

"1. ___

(signature) (name printed)

___

(Pct. No.) (address, city)

2. ___

(signature) (name printed)

___

(Pct. No.) (address, city)

3. etc. . . ."

Because petitions must be in the exact form prescribed by the law, as stated above, the meaning of the term "etc. . ." is important. The term "etc.," an abbreviation for the Latin phrase "et cetera," is "used to imply that other items *{*99}* are to be understood," Webster's Third New International Dictionary, Unabridged (1961).

While the term "etc." is occasionally used in legislation, **Conder v. University of Utah,** 257 P.2d 367, 123 Utah 182 (1953); **Doty v. American Telephone & Telegraph Co.,** 130 S.W. 1053, 123 Tenn. 329 (1910); **State v. Arnold,** 38 N.E. 820, 140 Ind. 628; **O'Connor v. City of New York,** 165 N.Y.S. 625, 178 App. Div. 550; **Garvin v. State,** 81 Tenn. (13 Lea) 162; we are unable to find a case in which the term is used in the manner set forth here. Thus it must be conceded that the use of the term in the statute is not only unusual, but, were it standing alone without context to give it meaning, it would be too indefinite to permit its application. **Conder v. University of Utah, supra.** But it seems clear in view of the previous language in the section that "etc." is used to indicate a legislative intent that each line of the petition form set out in full the elements of the signature line as set forth in lines "1" and "2" of the Section. Unless the term is given this meaning, employment of the previous lines becomes meaningless. The term "etc." should not be construed as meaningless, and it is our opinion that it should be given its natural significance; giving to the meaning the conclusion that the intention of the act was to require that all signature lines on all petitions contain the same information as set forth in lines "1" and "2" of the form. **Doty v. American Telephone & Telegraph, supra.**

7. Section 3-8-24.4, sets forth the number of signatures required on nominating petitions:

"A. The basis of percentage for the votes of the party in each instance referred to in this section shall be the total vote for the party's candidates for governor at the last preceding primary election at which the party's candidate for governor was nominated.

"B. Nominating petitions for a candidate for United States senator or any state-wide elective office shall be signed by a number of voters equal to at least one percent of the

votes of the party of the candidate in each of at least ten counties in the state and not less than three percent of the total vote of his party in the state.

"C. Nominating petitions for a candidate for United States representative shall be signed by a number of voters equal to at least one percent of the votes of the party of the candidate in each of at least five counties of the congressional district, and not less than three percent of the total vote of his party in the congressional district.

"D. Nominating petitions for a candidate for member of the legislature, district judge, district attorney, state board of education or magistrate shall be signed by a number of voters equal to at least three percent of the total vote of his party in the district or division as the case may be."

Section 3-8-24.4(D) poses a particular problem in determining the required number of signatures for legislative races. The law requires that the votes cast for the gubernatorial candidates of the party of the candidate in the previous primary election (1970) in legislative districts be used to determine the number of signatures required on petitions for candidates running for the Legislature. However, these candidates will be running from districts created by the 1972 reapportionment legislation. Thus, each legislative district is now composed of precincts which bear no relation in number or description to the precincts used in the 1970 Primary Election. However, the Office of the Secretary of State has been able to take the votes cast for governor by precinct and arrange these totals to correspond with the precincts established through 1972 reapportionment.

The problem presented in this question arises from the fact that during the 1970 Primary Election all absentee ballots were cast without regard to precincts and/or districts. Because of this fact it is impossible to determine whether or not an absent voter actually cast a vote for a gubernatorial candidate or what 1970 or 1972 legislative district or precinct the absent voter represented. While according to a study by the Secretary of State, the difference in the actual number of signatures that could be required is very small if it were possible to determine which absent voter voted in each precinct, because the law does require that the computation be made on the *{*100}* "total" party vote as prescribed in the statute, it is feared that the validity of petitions will be jeopardized if this portion of the vote is not included in the computation. We share your concern in this matter, particularly in view of decisions holding that it must be assumed "that the legislature intended the words used by it to mean what those words are generally understood to mean, and that it used the words advisedly to express exactly what it had in mind, unless it clearly appears that such assumption is unfounded." **State ex rel. Palmer v. Miller, supra.** Therefore, while we realize that it will be impossible to determine the exact number of signatures required to bring the number of petitioners up to the total necessary for all voters to be considered in computations, we suggest the addition of a few names, the estimate to be based on your study mentioned above, when "total" voters are computed for legislative candidates. As the New Mexico Supreme Court said:

"As we view the situation, we would be guilty of the grossest type of judicial legislation if in the instant case we were to add the words sought by petitioner into the section, thereby substantially reducing the required number of signatures fixed specifically by the legislature." **State ex rel. Palmer v. Miller, supra.**

In our opinion, we would face the same criticism if we were to delete the requirement of "total" voters from the petition.

By: Leila Andrews

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