

Opinion No. 74-33

October 10, 1974

OPINION OF: DAVID L. NORVELL, Attorney General

BY: W. Royer, Assistant Attorney General

TO: The Honorable R.E. Thompson New Mexico State Senate P.O. Drawer 700
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QUESTIONS

Which central committee of the Democratic political party, state or county, is to file the name of its nominee for the position of representative for Legislative District 58 of the New Mexico House of Representatives?

CONCLUSION

The County Central Committee.

ANALYSIS

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The Democratic candidate chosen at the 1974 Primary Election for Legislative District 58 for the New Mexico House of Representatives has resigned his nomination, thereby creating a vacancy in that position on the November 5, 1974 General Election ballot. Legislative District 58 consists of fourteen precincts that are all within Chaves County, New Mexico (Section 2-7-186, NMSA, 1953 Comp. (1973 P.S.)).

The filling of a vacancy occurring after a primary election is governed by Section 3-8-8 (A), NMSA, 1953 Comp. It reads in part:

"If after a primary election a vacancy occurs, for any cause, in the list of nominees of a qualified political party for any public office to be filled in the general election, the central committee of the political party, state or county as the case may be, may fill the vacancy by filing the name of its nominee for the office with the proper filing officer.

A similar question was answered in Opinion of the Attorney General No. 72-49, dated September 13, 1974. In that opinion, the Attorney General was asked which central committee should appoint the nominee for the office of District Attorney for the Second Judicial District. The opinion concluded:

"If the judicial district is a multi-county one, the state central committee names the nominee as it recently did in the Fifth Judicial District. If the judicial district is composed

of a single county, as the Second Judicial District now is, there could be no question but that the nominee is to be selected by the county central committee. Any other conclusion would render a portion of the above quoted statute (Section 3-8-8A) meaningless. Statutes are not construed in such a manner."

We concur with that opinion today.

We have determined that a change has occurred in the Rules of the Democratic Party since the issuance of the opinion discussed above. Rules and regulations of political parties are governed by Sections 3-7-2 and 3-7-3, NMSA, 1953 Comp. Section 3-7-2, **supra**, provides:

"A. To qualify as a political party in New Mexico, each political party through its governing body shall adopt rules and regulations providing for the organization and government of that party and shall file the rules and regulations with the secretary of state. Such rules and regulations shall be adopted uniformly throughout the state by the county organizations of that party and shall be filed with the county clerks.

B. Each county political party organization may adopt such supplementary rules and regulations in so far as they do not conflict with the uniform state rules and regulations or do not abridge the lawful political rights of any person. Such supplementary rules shall be filed with the county clerk and the secretary of state in the same manner as other rules are filed."

And Section 3-7-3, **supra**, provides in part:

"Rules and regulations -- Contents. -- The secretary of state and the county clerk shall not accept the rules and regulations of any political party for filing unless such rules and regulations provide:

* * *

F. The powers and duties of party officers, committees and other governing bodies;"

Pursuant to these sections, in September, 1973, the Rules of the Democratic Party were changed regarding the filling of candidate vacancies. Rule 6(d) provides as follows:

"Filling Candidate Vacancies. It (the State Central Committee) shall have {*66} the authority to fill any vacancy on the Democratic Party ticket for any office on the official ballot of the general election except those in county government. Provided, however, vacancies in the Democratic Party ticket for any non-county office which comprises a district less than state-wide, shall be filled by the State Central Committee members from the county or counties in which the district is situated."

It is our opinion that Rule 6(d) is in conflict with the provisions of Section 3-8-8 (A), **supra**. As written, Rule 6(d) strips the County Central Committee of all power to fill vacancies except for county officers. It is our opinion that the intent of Section 3-8-8 (A), **supra**, was to allow the County Central Committee to fill all candidate vacancies that occur in a district that is entirely within the county. It is also our opinion that where the district involved is composed of a multi-county district, the intent of Section 3-8-8 (A), **supra**, is to allow the State Central Committee to fill any vacancies that may occur. Inasmuch as Rule 6(d) conflicts with Section 3-8-8 (A), **supra**, the statute must control.

It is our opinion that the nominee to fill the Democratic position for Representative of the 58th Legislative District on the November 5, 1974 General Election ballot must be chosen by the County Central Committee of Chaves County.