

Opinion No. 75-61

November 5, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

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

QUESTIONS

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In 1975 the New Mexico State Legislature enacted provisions relating to primary elections. Chapter 255, Laws of 1975 and Chapter 295, Laws of 1975. The following questions relate to these chapters:

1. Do the nominating petitions filed with the Secretary of State at the time of filing a statement of candidacy for convention designation count toward the petitions needed by candidates who do not receive the requisite number of delegate votes at the convention and use the alternate method of filing a declaration of candidacy?
2. Should the Secretary of State count signatures on nominating petitions which have been reproduced on a copying machine?

CONCLUSIONS

1. Yes.
2. No.

OPINION

{*163} ANALYSIS

1. By virtue of the action taken in the First Session of the Thirty-Second Legislature, there are now two methods by which a prospective candidate may seek to have his or her name placed on a major party's primary ballot for nomination to a state-wide office or to the Office of United States Representative. The first method is designation by party convention for placement on the primary ballot. In order to be considered at the preprimary convention, a candidate must:

"[file] a statement of candidacy for convention designation and at the same time and place, a nominating petition which contains the required number of signatures for that office." Section 3-8-19.1(A), NMSA, 1953 Comp. (1975 Interim Supp.).

Under Section 3-8-19.3, NMSA, 1953 Comp. (1975 Interim Supp.), a candidate seeking to place his or her name before the convention for designation on the primary ballot must conform to the requirements set out in Sections 3-8-24.1 through 3-8-24.6, NMSA, 1953 Comp. (1975 Interim Supp.). The number of signatures which must be filed by a candidate for statewide office or for United States Representative in order to be considered for convention designation is specified in Section 3-8-24.4, **supra**. The applicable portion of Section 3-8-24.4, **supra**, as recited in Chapter 295, Laws of 1975, states:

"3-8-24.4. PRIMARY ELECTION LAW -- NOMINATING PETITION -- NUMBER OF SIGNATURES REQUIRED. -- 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 ~~{*164}~~ 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 statewide elective office shall be signed by a number of voters equal to at least one per cent of the votes of the party of the candidate in each of at least ten counties in the state and not less than one per cent 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 per cent of the votes of the party of the candidate in each of at least five counties of the congressional district and not less than one per cent of the total vote of his party in the congressional district.

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

If a candidate fails, at the preprimary convention, to receive the requisite twenty per cent of the delegate vote in order to be placed on the party's primary ballot by convention designation, an alternate method is available to him under Section 3-8-24.10, NMSA, 1953 Comp. (1975 Interim Supp.). The requirements for placement on the ballot under the alternate method are:

"3-8-24.10. PRIMARY ELECTION LAW -- FAILURE TO RECEIVE CONVENTION DESIGNATION -- ALTERNATE METHOD OF PLACING NAME ON PRIMARY ELECTION BALLOT. -- A. Anyone who has been certified by the secretary of state as a candidate for convention designation but does not receive at least twenty per cent [20%] of the delegate vote may have his name printed on the primary election ballot as a candidate for that office provided that no later than fifty [50] days before the primary election he shall file a declaration of candidacy and nominating petitions in the form prescribed by section 3-8-24.1 NMSA 1953 containing:

(1) The signatures of voters **totaling** not less than one per cent [1%] in each of ten [10] counties with a **total** of three per cent [3%] state-wide of the total number of votes cast in the state by that party for governor in the last preceding primary election at which the party's candidate for governor was nominated in the case of a candidate for state-wide office; or

(2) the signatures of voters **totaling** not less than one per cent [1%] in each of five [5] counties with a **total** of three per cent [3%] district-wide of the total number of votes cast in the district by that party for governor in the last preceding primary election at which the party's candidate for governor was nominated, in the case of a candidate for United States representative.

B. The secretary of state shall determine whether the nominating petitions and signatures and addresses of voters {**165*} are valid and comply with law.

C. If such determinations are answered in the affirmative, the candidate shall have his name printed on the primary election ballot as a candidate for such office provided that his name shall be printed on the ballot immediately following the names of those persons who are convention - designated candidates for that office. If there are two [2] or more candidates who qualify under the provisions of this section to have their names printed on the ballot for any one [1] office, their respective positions shall be determined by lot." (Emphasis added.)

The question of whether the Secretary of State should count the signatures filed by a candidate in the process of seeking convention designation as a part of the signatures needed to be placed on the ballot under the alternate method provided for in Section 3-8-24.10, **supra**, is raised because Section 3-8-24.5(A), **supra**, states:

"A nominating petition when filed shall not be withdrawn **nor added to**, nor shall any person be permitted to revoke his signature thereon." (Emphasis added.)

This section limits the manner in which a candidate may submit petitions for convention designation in that, once nominating petitions for convention designation are filed, new signatures may not be added to the petition to qualify for the convention. However, this section should not be construed to prohibit the inclusion of the signatures originally filed by the candidate for convention designation in the total necessary to appear on the ballot using the alternate method.

The number of signatures necessary to be placed on the ballot by the alternate method is a **total** of not less than one per cent [1%] in each of ten [10] counties with a **total** of three per cent [3%] state-wide of the total number of votes cast by a party for governor in the last preceding primary election at which the party's candidate for governor was nominated in the case of a candidate for state-wide office. The total required for United States Representative are one per cent [1%] in each of five [5] counties within his district with a **total** of three per cent [3%] district-wide of the total vote cast by the party for

governor at the last preceding primary election at which the party's candidate for governor was nominated.

These totals were clearly set by the legislature in 3-8-24.10, **supra**. The figures cannot be interpreted to mean signatures totaling four percent [4%] of the total vote cast for governor in the last preceding January election must be submitted for placement on the ballot using the alternate method. This would be the result if a candidate were forced to submit signatures totaling one percent [1%] of the total vote cast for governor in the last preceding January election in order to be considered by the convention and then an additional three percent [3%] to be placed by the alternate method.

The New Mexico Supreme Court in **State ex rel. Palmer v. Miller**, 74 N.M. 129, 391 P.2d 416 (1964), stated that the court would not give an interpretation to the then existing nomination statute which would alter the number of signatures necessary to be placed on the ballot. The court stated that the alteration of the percentage necessary for placement on the ballot would be the "grossest type of judicial legislation."

{*166} A reading of the statute which does not construe the signatures found on the petition for convention designation to be part of the petition under the alternate petition would in fact alter the legislative mandate to procure three percent [3%] of the vote into a mandate to procure a total of at least four percent [4%]. Such a deviation from legislative intent is not appropriate in view of the well - established rule that the words of a statute are to be given their ordinary meaning unless it is clear that the ordinary meaning of the words does not apply. **Albuquerque Lumber Co. v. Bureau of Rev.**, 42 N.M. 58, 75 P.2d 334 (1937); **In Re Cox' Estate**, 57 N.M. 543, 260 P.2d 909 (1953).

Requiring signatures in an amount exceeding a total of three percent of the vote would also contravene the constitutional principal which states that access to the ballot must be genuinely open to all, subject only to reasonable legislatively mandated requirements. The standard of genuinely open ballots was adopted by the Supreme Court of New Mexico in **Dillon v. King**, 87 N.M. 79, 529 P.2d 745 (1974). **Dillon** cites the United States Supreme Court case of **Jenness v. Fortson**, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554 (1971) to establish that the state legislature may demand that a reasonable number of signatures upon a petition from candidates wishing to be placed upon a ballot but may not use such requirements to unduly restrict access to the ballot. While it is clear that the state legislature may require that a candidate demonstrate a reasonable amount of voter support in order to promote orderly elections and prevent overly long ballots, enforcement of the statute in a more burdensome manner than the legislature mandates would inappropriately limit access to the ballot.

Finally, prohibiting additional signatures to be added to the petitions on file for convention designation would subvert the alternate method of placement on the ballot. Nominating petitions refer to the forms used to obtain voters' signatures on behalf of a person wishing to become a candidate for political office. The term has a collective meaning in that any signatures submitted by a candidate for a particular political position constitute his or her petition. See **State ex rel. Voss v. Davis**, 418 S.W. 2d 163

(Mo. 1967). The Court in **Davis** held that petitions calling for city charter amendments could be added to after an unsuccessful petition submission because the term petitions has a collective meaning. Thus, the process of submitting petitions was held to be a unitary process which was not terminated by a submission of a petition with an insufficient number of signatures. The same logic applies to the construction of New Mexico's primary election laws. All of the signatures submitted by the political candidate constitute his or her petition for candidacy. Signatures obtained before the convention by a candidate serve the same function, i.e., that of securing a place on the primary ballot for the candidate, as those submitted after the convention. In the absence of clear legislative intent to do so, no distinction between the signing of a petition before the convention and the signing of a petition after the convention ought to be made and both types of signatures should be considered equally as part of the candidate's petition. If candidates are not allowed to add signatures to their petitions after the convention they would be unable to add any signatures in order to qualify under the alternate method {**167*} because they would, in effect, be adding to their petition for nomination.

2. The duties of the Secretary of State, as filing officer include more than merely counting the signatures on the petition. Under Section 3-8-24.8, **supra**, the Secretary of State must certify that certain candidates have complied with the requirements of the Primary Election Law. Section 3-8-24.8, **supra**, states:

"3-8-24.8. PRIMARY ELECTION LAW -- STATEMENT OF CANDIDACY FOR CONVENTION DESIGNATION -- DUTY OF SECRETARY OF STATE. -- A. Not later than seventy [70] days prior to the date of the primary election, the secretary of state shall certify to the chairman of the state political party the names of that party's candidates for state-wide office or office of United States representative who have filed their statements of candidacy for convention designation and have otherwise complied with the requirements of the Primary Election Law.

B. No person shall be placed in nomination at the convention unless he has been so certified by the secretary of state."

Under Section 3-8-24.5, **supra**, the originals of all nominating petitions must remain in the filing officer's office. Thus, such petitions must necessarily have been submitted to the filing officer and the Secretary of State may not certify that the provisions of the Primary Election Law have been complied with until the originals have been filed with her office.

Signatures submitted pursuant to the alternate method must also be presented to the Secretary of State under Section 3-8-24.10, **supra**. The Secretary must obtain the original petitions to fulfill her duties under subsection B of 3-8-24.10, **supra**, in that she must determine that the petitions comply with law. Unless the original petitions are provided to the Secretary the candidate's name should not be placed upon the primary election ballot.

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