

Opinion No. 80-30

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OPINION OF: Jeff Bingaman, Attorney General

BY: Jill Z. Cooper, Deputy Attorney General; Noelle L'Hommedieu, Schoen, Assistant Attorney General

TO: Honorable George Fettinger, New Mexico State Representative, P.O. Drawer M, Alamogordo, New Mexico 88310

ELECTIONS

The committee vote to fill the vacancy on the 1980 general election ballot for the office of United States representative for the second congressional district is limited to those members of the democratic state central committee from the counties in the district.

FACTS

As a result of the June 3, 1980 primary election, Representative Harold Runnels was nominated by the democratic party as its candidate for the office of United States representative for the second congressional district. That district includes Catron, Chavez, Curry, De Baca, Dona Ana, Eddy, Grant, Hidalgo, Lea, Union, Luna, McKinley, Otero, Roosevelt, San Juan, Sierra, Socorro and Valencia counties. Section 1-15-16(B) NMSA 1978.

The August 5, 1980, death of Representative Runnels created a vacancy on the democratic line on the 1980 general election ballot. Section 1-8-8 NMSA 1978 provides that this vacancy may be filled by "the central committee of the state political party filing the name of the nominee for the office with the proper filing officer."

QUESTIONS

Is the committee vote to fill the vacancy on the 1980 general election ballot for the office of United States representative for the second congressional district limited to those members of the democratic state central committee from the counties in the district?

CONCLUSIONS

Yes.

ANALYSIS

In order to properly interpret the provisions of Section 1-8-8 NMSA 1978 as they apply to filling a post-primary vacancy for a democratic nominee on the 1980 general election

ballot, it is helpful to review the provisions governing the selection of the democratic nominee before the primary.

OPINION

Section 1-8-22 NMSA 1978 provides that a person may not have his name printed on the primary election ballot as a candidate for nomination to the office of United States representative unless he:

". . . files 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; . . ."

{*174} Section 1-8-31 NMSA 1978 requires that a person signing nominating petitions be

". . . a voter of the state, district, county or area to be represented by the office for which the person seeking the nomination is a candidate . . ."

Section 1-8-33 NMSA 1978 provides that the nominating petitions for the office of United States representative

". . . 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 one percent of the total vote of his party in the congressional district."

Section 1-8-38 NMSA 1978 provides that

". . . state conventions of major political parties shall make convention designations of candidates for nomination to statewide office or office of United States representative on the primary election ballot."

Section 1-8-39 NMSA 1978 provides that a candidate for the office of United States representative who does not receive at least twenty percent of the delegate vote at a party convention may still run in the primary election if he files a declaration of candidacy and nominating petitions containing

". . . signatures of voters totaling not less than one percent in each of five counties with a total of three percent district wide of the total number of votes cast in the district by that party for governor in the last preceding primary election . . ."

Thus, the pre-primary process for the nomination of candidate for United States representative tends to focus on the voters of the district to be represented.

Similarly, the voting for the party nominee at the primary election is restricted to voters in the congressional district from which the United States representative is being elected. Section 1-15-17 NMSA 1978 clearly states that

"One representative in Congress shall be nominated and elected from each congressional district for voting purposes. Ballots for representatives in Congress shall designate the office as congressional district no. one and congressional district no. two. Only voters of each district shall be eligible to vote for the respective candidates of the district."

Turning now to Section 1-8-8, it would follow that the same limitations would apply to the vote taken by the members of the state democratic central committee to fill the vacancy on the ballot for a congressional district. That is, since the state democratic central committee is performing the function of choosing a nominee, a function that is otherwise performed by the voters of the district pursuant to Section 1-15-17, only the members from the district are eligible to vote. Indeed, it has been expressly held that, under the principle of "one man, one vote," where a committee of a political party selects the party's nominee for the office of United States representative, the nominators may not include committee members who have no relation to the congressional district to be represented. **Montano v. Lefkowitz**, 575 F.2d 378 (2nd Cir. 1978).

{*175} Further support for this conclusion is found in the Rules and Regulations of the Democratic Party of the State of New Mexico. In order for a political party to "qualify" in New Mexico, it must, "through its governing body . . . adopt rules and regulations for the organization and government of that party." Section 1-7-2(A) NMSA 1978. Party rules and regulations must include

". . . D. A method for selection of state central committee members, a state chairman and other party officers, and all other members of governing bodies of the party; . . .

. . . J. A method of amending the party rules and regulations." Section 1-7-3 NMSA 1978.

Pursuant to this authority, the democratic party has defined the structure and duties of the state central committee and has ruled that vacancies on the party ticket for non-county offices which are not statewide "shall be filled by the state central committee members from the county or counties in which the district is situated." Rule 5(A)(4). Under Section 1-7-5 NMSA 1978, the rules of a political party may not be amended within one hundred and twenty days of the general election.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General