

Opinion No. 16-1878

October 7, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. G. W. Shrader, Roswell, New Mexico.

Primary elections not provided for or regulated by statute.

OPINION

{*427} I have just received your letter of the 5th instant in which you say that in May the Democratic party in your county had a primary election for the purpose of selecting candidates and electing delegates to a county convention to be held later, in Roswell, such county convention being held to elect delegates to the state convention at Albuquerque and to the state convention in Santa Fe. You further say that since your county convention some vacancies have occurred on the ticket which have been filled by your Democratic County Central Committee, and that now a question arises, under Section 1995 of the Codification of statutes, under which it is contended by some that it is mandatory upon the chairman and secretary of the county convention to file a certificate with the county clerk showing who was declared, if anyone, entitled to have their names placed upon the county ticket as nominees for the various county offices. You also say that you, as chairman of the county convention, take the position that it is not compulsory by law that you, as chairman, should certify to the county clerk as to who received the nominations by reason of the primary election, but that it is the duty of the Central Committee to make that certificate.

I do not understand from your statements whether the county convention declared who the candidates should be, following the result of the primary election. Such a primary election as you speak of for the purpose of selecting candidates, is a matter not provided for nor regulated by statute. It is a voluntary election and a matter of party management. If the county convention thereafter should declare the persons selected at the primary election, to be the candidates of the party, then a certificate of that action with the names of the candidates should be filed under said Section 1995, but there is nothing in that section which compels anyone to file any such certificate. The object of the filing is to prevent any other person or convention from nominating and printing upon another ballot the name or names of the candidates selected by the convention, and under Section 1993, the county clerk is authorized to provide printed ballots upon which shall be printed only the names of the candidates whose names have been certified to or filed with him in the manner provided in Section 1995. There is no provision of law by which anything is to be certified to the county clerk except the action of a political convention held for the purpose of nominating candidates, except by implication, the second proviso in Section 1995 may be held to authorize the executive committee of any political party which has held such a convention, to make a certificate or certificates

as to the filling of vacancies caused by death, declination or retirement {^{*428}} of any candidate nominated by the convention, and to file such certificate with the county clerk.

I am unable to see how it is the duty of the Central Committee to make and file with the county clerk any certificate as to the result of the primary election, or as to the action of the convention, and it seems clear that the action of the convention must be certified by the presiding officer and secretary of the convention.

In other words, any action of a political convention making nominations of candidates for offices, should be certified by the presiding officer and secretary of the convention and filed with the county clerk; and any action of the executive committee in filling vacancies occurring after the convention, must, of necessity, be certified by the committee filling the vacancies and filed with the county clerk.