

Opinion No. 18-2104

June 25, 1918

BY: MILTON J. HELMICK, Assistant Attorney General

TO: Mr. J. E. Owens, Santa Rosa, New Mexico.

Statement of Expenses in Primary Election Required of Successful Candidate.

OPINION

We have your inquiry of the 16th inst., wherein you ask whether candidates for county office are required to make a sworn statement of their campaign expenses in the primaries.

The question that you ask is difficult to answer. Section 2057, of the Codification of 1915, places a limitation on the expenditures to be made by any candidate, "in order to secure or aid in securing his nomination or election, or both such nomination and election."

In Section 2058, it is provided that every person who shall be a candidate for any public office, shall file certificates of his expenses, one certificate to be filed not less than five nor more than ten days prior to the election, and the other certificate to be filed within thirty days after the election. The statement of expenses to be contained in such certificate must cover expenditures made to secure a candidate's nomination or election. It thus clearly appears that the statement of nomination expenses, as well as the expenses of the actual election must be filed by the candidate.

The Sections cited apply of course, to general elections. We have in this State no provision for primary elections, and no statement of expenditures is required of candidates at voluntary primary elections. However, the question then arises whether a candidate who is successful at the primaries, and is thereafter nominated by his party convention, would be required to make a statement of his primary expenses in the certificates which he must file at the general election? In other words it must be determined whether the primary expenses of one who becomes the party nominee, are expenses of nomination within the meaning of Sections 2057 and 2058. If such primary election expenses are nomination expenses, then the result would be that the successful candidate in a primary election, would be required to file a statement of such expenses, while the unsuccessful candidates at the primary election would not be required to make any such statement.

We have been unable to find any authority defining "nomination expenses."

As we understand the voluntary system used in your portion of the State, the successful candidate is nominated by the party convention as a matter of moral obligation. There

being no law for primary elections, the result of such elections are not legally binding on the party conventions, and it might be argued that the nomination comes solely from the convention, and that the expenses of the primary election should therefore not be considered nomination expenses. We do not think that such a view can be upheld. We think expenditures made in the primary election are obviously made for the purpose of securing a nomination at the hands of the party convention, and are therefore, nomination expenses, within the meaning of our statutes.

As we have pointed out above, statements of nomination expenses, as well as all election expenses, are required of a candidate at general elections, and it is therefore our conclusion that when he is nominated by a party convention for a county office, and is required to file a statement of his expenses of nomination and election he must at the general election include in the statement all expenditures he made at any voluntary primary election in which he may have participated with a purpose of obtaining his nomination. The result is that only the successful primary election contenders who are duly nominated by the party convention, are required to make such statement. It should also be observed that this statement should be made at the general election, and not at the time of the primary election.