

## Opinion No. 42-4188

November 18, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mrs. Jessie M. Gonzales Secretary of State Santa Fe, New Mexico

{\*280} We have your letter in which you request an opinion concerning whether or not a failure of a candidate to file a statement of his expenses not less than five days before a general election constitutes a crime which should be prosecuted under our law.

It is noted that Section 707 of the Election Code, Compilation of 1929, Section 41-707, provides that:

"Every candidate at any election shall not less than five nor more than ten days prior to the election, \* \* \*"

file a sworn statement of campaign expenses in the manner provided in such section.

Section 708 of the Election Code, Compilation of 1929, Section 41-708 provides:

"Any candidate who shall expend more than the amount above limited for the purposes herein stated, or who shall fail to file the sworn statement herein prescribed, shall be punished by a fine not exceeding five hundred dollars, and no person shall enter upon the duties of any elective office or receive any of the emoluments thereof and no certificate of election shall be delivered to any such candidate, until he shall have filed such sworn statement."

This is the only penalty provision in connection with the section which requires the filing of expense accounts by candidates. It is noted that such section provides a penalty for one who shall **fail** to file the sworn statement; it is not made a penalty for the mere failure to file within five {\*281} days of the general election.

From a reading of the entire section, it is clear that the Legislature intended that such statements could be filed at other dates without subjecting candidates to a penalty. It is even provided that the Certificate of Election shall not be delivered to any candidate until he shall have filed such sworn statement. In other words, it is even possible to file the statement after the Canvassing Board meets without necessarily incurring a penalty under this provision.

It is my opinion that only a wilful failure to file such statement subjects a candidate to punishment. In the event a candidate should refuse to file a statement within a reasonable length of time, he should be punished by a fine not exceeding five hundred dollars.

By HARRY L. BIGBEE,

Asst. Atty. General