

Opinion No. 43-4220

January 30, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Georgia L. Lusk, Supt. of Public Instruction, Santa Fe, New Mexico

We are in receipt of your letter of recent date, in which you ask an opinion of this office as to the manner of nominating candidates for municipal school elections, and what provision, if any, is made by our law as to the time at which candidates must file their declarations of candidacy.

The provisions of our statutes relating to this question are as follows: Sections 55-905, 14-1303, 56-301, 56-802, 56-908, 56-720 of the New Mexico 1941 Compilation.

Section 55-905 provides that municipal school board elections

"shall be **called, conducted, returned, and canvassed** by said board (municipal board of education), as in the case of officers in the respective incorporated cities, towns and villages, except that no registration shall be required."

Section 14-1303, relating to the calling of municipal elections provides:

"that all elections for municipal officers shall in all respects, **be held and conducted** in the manner prescribed by law in cases of county elections, provided, however, that the proclamation for all municipal elections shall be signed by the Mayor and attested by the Clerk of such municipal corporation, and such proclamation shall be published once a week for two consecutive weeks, the last insertion thereof to be made at least one day before the date of said election."

It will be seen that the only requirement this latter section adds to those of Section 55-905, is that the proclamation be published for two consecutive weeks, the last insertion thereof to be at least one day before the date of said election.

Section 56-301, relating to the calling of County elections, provides in part:

"that the board of county commissioners shall, at least fifteen days before the election, by proclamation and publication, as hereinafter provided, give notice of the election, the objects thereof, the offices to be voted for, **the names of the candidates for each of said offices, as the same have been certified to the county clerk as hereinafter provided,** * * * said proclamation shall be published two times prior to the date of the election in a legal newspaper * * * the last publication to be not more than seven days preceding the election."

In previous opinions Nos. 3458 and 3489 of this office, dated March 4, 1940, and March 21, 1940, respectively, it was suggested that the provisions of this section relating to the form and contents of a proclamation should also be followed, and that as a result, candidates had to file their declarations of candidacy at least 15 days prior to the date of the election so that their names might appear in the proclamation.

With these opinions, I cannot agree. Section 14-1303 provides only that municipal elections shall be **held** and **conducted** in the manner prescribed by laws in cases of county elections, and does not provide that they shall be **called** in the manner of county elections as does Section 55-905 in tying the School Board election to the municipal election.

It will also be seen that Section 14-1303 provides that the proclamation be made once a week for two consecutive weeks, the last publication to be made at least one day prior to the election. In other words, the first publication need only be eight days prior to the election, while Section 56-301 requires the proclamation to be made fifteen days prior to the election, and the last publication to be not more than seven days preceding the election.

Further, Section 56-301 provides that the proclamation shall contain:

"the names of the candidates for each of said offices as the same shall have been certified by the County Clerk as hereinafter provided."

Section 56-302, relating to the certifying of candidates can apply only to general elections, since it contemplates nominations only for political parties, and since candidates are usually not selected along party lines, for city and municipal board elections. Also, this form of nomination and certification can apply only to political parties which cast less than 15% of the votes for the Governor and all other parties are required to nominate by a primary election under the terms of Section 56-804, and Section 56-908, so that the two major political parties of this state cannot come within its provisions. With this in mind, it will be seen that the Legislature could not have intended this construction, since by virtue of Section 58-805, municipal school board or city elections are not included within the primary scheme, and so the major political parties could not nominate, even though they chose to do so.

Turning now to Section 56-720, it was seen that the provisions of Chapter 41 of the Laws of 1927 are made inapplicable to municipal boards of education. and city elections, and so prohibits reference to Section 56-301 and 56-302, since they are a part of this chapter.

In view of the foregoing, it is my opinion that Section 56-301 and 56-302 have no applications to municipal boards of education elections or city elections, and that as there is no other statutory provision relating to the nomination of such candidates or the filing of declarations of candidacy for such office, a person who receives the highest

number of votes for such office would be the duly elected officer, no matter when or how he succeeded in getting his name placed on the ballot.

To this extent, the above mentioned opinions are hereby overruled.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General