

Opinion No. 44-4500

April 19, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Viola K. Reynolds, County Clerk, Raton, New Mexico

At the request of Fred J. Federici, District Attorney, I am answering your request for an opinion dated April 18, 1944, in which two questions are asked, as follows:

"1. Should a County Clerk accept for filing a declaration of candidacy and supporting petitions of any candidate where it appears from the registration affidavits of the county that the prospective candidate in question changed his party affiliation on the registration affidavit from, let us say, Republican to Democrat, prior to the issuance of the Governor's proclamation, but within twelve months prior to said declaration, and then seeks to file as a candidate under his new party affiliation?"

"2. Should a County Clerk accept for filing a declaration of candidacy and supporting petitions of any candidate where it appears from the registration affidavits of the county that the prospective candidate in question had originally declared no party affiliation, but did come in prior to the Governor's proclamation and declared his party affiliation within twelve months prior to the issuance of such proclamation, and then seeks to file as a candidate under the party affiliation he has so declared?"

Section 56-809 of the 1941 Compilation, Pocket Supplement, provides, in part, as follows:

"No person shall become a candidate for nomination for any office who has changed his party affiliation within twelve months prior to the issuance of the proclamation herein required by the Governor of the State of New Mexico."

Section 56-223 of the 1941 Compilation provides as follows:

"Any registered voter who, having declined to state his party affiliation and who may desire to show his party affiliation, or any registered voter who may desire to change his party affiliation, may effect such change or show such party affiliation by executing an application therefor, which application shall show the name of the voter, his party affiliation, if previously shown in the affidavit of registration, or his desire to have his party affiliation shown, if not previously shown, and the party with which the elector desires to affiliate. The application shall be subscribed and sworn to by the voter before an officer authorized by law to take acknowledgments. This application, when executed as herein provided, shall be filed with the county clerk, and shall be retained by him in a file for that purpose. The county clerk shall note such change or designation of party affiliation on such elector's affidavits of registration; provided, however, no person shall be entitled to change his party affiliation or designate such party affiliation after the

governor has issued the proclamation for the primary election until after the primary election, and then only until the thirtieth day before any other election at which registration of voters is required."

It is noted that the Legislature recognized a distinction between "change of party affiliation" and "designation of party affiliation," and this same distinction should probably be kept in mind in construing Section 56-809, as amended. Unless a person is already affiliated with a political party, as shown by his registration certificate, he could not effect a change in party affiliation. For that reason, Section 56-809, as amended, only prohibits persons who have previously been registered as affiliated with a political party from becoming candidates of another party to which they may have changed their affiliation within twelve months prior to the issuance of the Governor's proclamation. This section would not be applicable to a person who previously had declined or failed to show his party affiliation. Such a person could designate his party affiliation within twelve months prior to the Governor's proclamation and still be eligible to become a candidate of the party with which he is then affiliated.

In the case entitled State v. Board of County Commissioners of Lincoln County, 46 N.M. 472, at Page 479, the Supreme Court uses this language:

"Furthermore, this section imposes a duty on the proper officials to receive and file the declaration and nominating petitions only in the event 'such declarant is eligible to hold the office for which he seeks nomination under the Constitution and Laws of the State of New Mexico.'"

Since the 1943 amendment above quoted, I am of the opinion that the proper officials have no duty to receive and file declarations and nominating petitions of persons who are not eligible to become candidates of the respective party, and should, upon ascertaining facts showing ineligibility, refuse to receive and file such declarations.

Hoping that the above fully answers your questions, I am

By C. C. McCULLOH,

First Asst. Atty. General