

Opinion No. 44-4592

September 28, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. Darden Grimes, County Clerk, Clayton, New Mexico

Mr. Fred J. Federici, District Attorney of the Eighth Judicial District in a letter dated September 26, 1944 authorized this office to give you an opinion concerning the questions you submitted to this office in your letter of September 23, 1944. You stated that it has just come to your attention that the Republican Candidate for County Clerk was not a registered voter at the time he filed his Declaration for Candidacy for the Primary Election.

From the facts that you set out, it is clear that the person involved is a qualified elector of the State of New Mexico. It is further clear under the decision of the Supreme Court of the State of New Mexico that the person involved was not qualified to file in the Primary Election for any office. See *Roberts vs. Cleveland*, 48 New Mexico /-- , 149 Pac. (2d) 120. However, the question was not raised and we must assume that he was given a Certificate of Nomination by the County Canvassing Board and, therefore, under the provisions of Section 56-306 of the New Mexico 1941 Compilation you must place this candidate's name on the General Election Ballot unless restrained by a proper court order.

The question could be raised in a court proceeding concerning the eligibility of this candidate to have his name placed on the General Election Ballot in an Injunction proceeding brought against you and the candidate. The question would then be raised concerning whether or not this person is in fact entitled to have his name placed on the Ballot and also if it should be held that he is not entitled to have his name placed on the Ballot, the further question would be raised under the case of *State ex rel Schoyck vs. Board of County Commissioners*, 46 New Mexico, 472, 131 Pac. (2d) 278 whether any other person could be named at this time to be a candidate on the Republican ticket for County Clerk in your County.

Hoping that the above fully answers your questions, I remain

By HARRY L. BIGBEE,

Asst. Atty. General