

## Opinion No. 48-5151

May 14, 1948

**BY:** C. C. McCULLOH, Attorney General

**TO:** John R. Scanlon Assistant District Attorney Gallup, New Mexico

{\*149} This will acknowledge receipt of your letter of May 11, 1948, in which you request the opinion of this office as to whether a county Clerk may refuse to place the name of a county candidate on the primary ballot if the county clerk has received that person's declaration of candidacy and nominating petitions, but has subsequently found that the nominating petitions did not contain the signatures of a sufficient number of qualified electors.

Section 56-809, Supplement to the 1941 Compilation, provides that any person who desires to become a candidate of any political party in the primary election shall file a declaration of candidacy together with a petition or petitions for nomination signed by qualified electors who are members of his political party. For county offices the statute provides that the petition shall be signed by at least 25 qualified electors of the county wherein the declarant is seeking nomination.

Section 56-810 provides, in part, that the county clerk, upon receipt of the declaration and petitions, accompanied by the required fee, shall receive and file such declaration and petitions, if the declarant is eligible to hold office for which he seeks nomination.

Section 56-811 provides that not less than 20 days before the date of the primary the county clerk of each county shall group **all the candidates** for each party **and prepare a separate ballot** for each party.

From your letter it appears that in this case the county clerk has already accepted for filing and has filed the declaration of candidacy and the nominating petitions of the declarant for the county office. Consequently, it appears to me that the only question remaining is whether the county clerk can now refuse to place the candidate's name on the primary ballot.

The only statute which I find governing the placing of names on the ballot for county officers is Section 56-811 discussed above. That section apparently places no discretion in the county clerk as to whether he shall place the name on the ballot. It appears that he has the pure ministerial duty of placing that name on the ballot.

In 29 C. J. S. 161, Section 118 (b) the rule is stated as follows:

"Statutory provisions as to the preparation, furnishing, form and requisites of the ballots must be complied with. The officers who prepare the ballots act in a purely ministerial capacity and have no authority outside of that vested in them by statute."

Perhaps an interested party may seek redress in the courts by way of injunction, mandamus or other appropriate remedy against the declarant or the county clerk. However, I do not pass on that question.

In view of the above, I am of the opinion that the county clerk has no power to refuse to place the declarant's name on the primary ballot.

By WILLIAM R. FEDERICI,

Asst. Atty. General