

## Opinion No. 48-5173

September 30, 1948

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

**TO:** James C. Enloe Assistant District Attorney Seventh Judicial District Socorro, New Mexico

{\*168} In your letter of September 28, 1948, you inquire as to whether in filling a vacancy on the county ticket by the party committee before the official ballots are printed, and after the Primary, such candidate appointed to fill such vacancy must pay a filing fee under the provisions of Sections 56-810 and 56-817 of the 1941 Compilation.

Section 56-817 provides for the method of filling a vacancy occurring after the Primary and before the General Election. It is significant that this section is completely silent upon the question of filing fees for candidates nominated by the party committee to fill vacancies occurring after the Primary. A filing fee could, therefore, be charged such a nominee only under the provisions of Section 56-810.

The pertinent part of Section 56-810 provides:

"Such **declarations** and **petitions** shall be accompanied by a fee of three per centum (3%) of the first year's salary of said office. . . . All such funds in the hands of the county treasurer shall be designated 'Primary Election Fund.' . . ."

{\*169} You will notice that the filing fee only accompanies "declarations and petitions," meaning declarations of candidacy and accompanying petitions as specified in Section 56-809 of the 1941 Compilation. Those selected to fill vacancies after the Primary do not file such declarations and petitions.

The requirement of Section 56-810 designating such fees as the Primary Election Fund shows the legislative intention that candidates participating in the Primary Election should help pay the costs of conducting the election. The fee is not one charged against the successful candidate only, but against all, regardless of their subsequent success or failure, and refers only to the placing of the candidate's name on the ballot in the Primary Election and has no connection with the General Election.

It is, therefore, my opinion that a person selected by the party committee to fill a vacancy occurring after the Primary cannot be charged a filing fee in order to have his name appear on the ballot in the General Election.

By W. R. KEGEL,

Asst. Atty. General