

## Opinion No. 50-5313

July 24, 1950

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Honorable Alicia Romero Secretary of State Santa Fe, New Mexico

{\*170} I have your letter in which you ask whether Theodore (Theo) Stevens is entitled to a return of the filing fee paid by him as candidate for State Treasurer on the Democratic ticket prior to the primary election.

After accepting Mr. Stevens' filing fee, declaration of candidacy and nominating petitions, you determined he was ineligible for the office he sought, and pursuant to advice from this office advised the county clerks to refrain from placing his name on the ballots. It is in view of the fact that Mr. Stevens' name was not submitted to the Democratic electorate as a candidate that he seeks the return of his filing fee.

In Attorney General's Opinion No. 4132, rendered on August 8, 1942, it was held that a person who withdraws his candidacy is not entitled to a return of the fee previously paid. There it was said:

"Under the provisions of the New Mexico Election Law, set out above (§ 56-810 of the 1941 Compilation), the fee paid by the candidate is a fee for 'filing' his declaration. All the services required by said law with respect to 'filing' have been performed by the proper officer. The services having been performed, the officer is entitled to the fee designated in Section 10 of the act."

In *State v. Brodigan*, 37 Nev. 458, 142 P. 520, the court held:

"By the provisions of the statute set forth above the money paid by a candidate filing a nomination paper is paid to the secretary of state in this instance as a 'fee for such filing.' In the case at bar the services of the secretary of state were performed in the way of filing the nomination papers \* \* \* and all of the services required of the secretary of state in the way of filing were duly performed. The ministerial officer of the state -- to-wit, the secretary of state -- having performed the services required of him under the law was entitled to the fee, \* \* \* and the same having been paid to the secretary of state for filing services performed, cannot, in our judgment, be returned to the party seeking to have his name withdrawn."

Since the fee is paid to the secretary of state, for the services of filing the petition, it may not be refunded, once paid, on the grounds that the candidate's name did not appear on the ballot. The principle is equally applicable to cases of voluntary withdrawal or enforced withdrawal, whether by action of the secretary of state or the courts, or in case of the {\*171} death of the candidate prior to the election.