

Opinion No. 52-5486

February 5, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Beatrice B. Roach Secretary of State Santa Fe, New Mexico

{*199} In reply to your letter dated January 30, 1952, in which you request formal opinion on several questions based on the applicable provisions of Chapter 180, New Mexico Session Laws of 1951, I shall give you my opinion to each question in the order in which you have presented them in your letter. Your first question is:

"Can the petitions of candidacy authorized in the above-mentioned statute be signed with indelible pencil or will they be valid only if signed in ink?"

It is my opinion that indelible pencil is ink insofar as meeting the statutory requirement. This question has been before the courts in other states. In the case of Thrailkill v. Smith, 138 NE 532, 533, 106 Ohio 41, the Supreme Court of Ohio stated that since indelible pencils are "a pencil in which a solid indelible pigment takes the place of the usual lead" and held that its use in the signing of referendum petitions was valid and in compliance with the constitutional requirement that such petitions be signed in ink, and ruled that the Secretary of State must accept the petitions so signed.

Your second question is:

"In the heading of such petitions, will slight variances in {*200} the listing of the name of the subject candidate invalidate the said petitions? For instance, although the candidate may list his full first and/or middle name on his Declaration of Candidacy, will the use of his initials in one or both instances on his petition (s) invalidate the petition (s)?"

It is my opinion that so long as the name reasonably and sufficiently identifies the declarant or candidate and so long as there is no patent discrepancy between the name on the nominating petition and the name on the Declaration of Candidacy such petitions are valid and acceptable. The name to be placed on the ballot for the primary election should be the same as that on the Declaration of Candidacy.

Your third question is:

"In view of the fact that the aforesaid Chapter 180 provides that the electors signing the prescribed petitions of candidacy 'shall write opposite their names their respective post office address and the county and precinct wherein they are registered . . . ,' will such petitions be invalidated by a sufficient number of omissions of address, county and precinct listed by a sufficient number of omissions of address, county and precinct listings by the signers? It has come to the attention of this office that many electors are not familiar with the numerical designation of the precincts wherein they are registered

and are, at least in certain instances, omitting such designation when signing the said petitions, therefore this question."

It is my opinion that the wording of Chapter 180, which is as follows,

"The electors signing such petition shall write opposite their names their respective post office address and the county and precinct wherein they are registered as an elector", is mandatory and not directory or discretionary. Any signature on a nominating petition not containing the address, county and precinct number of the elector is invalid, does not comply with the statutory requirements and should not be accepted by the Secretary of State as valid.

Your fourth question is:

"Is it mandatory that the address of a candidate for nomination in the primary election appear in the heading of each petition form he may file with the Secretary of State or with the appropriate County Clerk?"

The answer to question number four, in my opinion is "yes," for the reason that paragraph 4, Sec. 8, Chap. 180, 1951 New Mexico Session Laws reads as follows:

"Such nominating petition may consist of one or more sheets, to be fastened together in the form of one petition, but each sheet shall contain the same heading, which shall contain the name and address of the person seeking nomination, together with the designation of the office for which such person is seeking nomination."

The language as above stated, therefore, is mandatory and not discretionary on the part of the County Clerk and any nominating petition not containing the address of the candidate and his official designation on each sheet is invalid. Let me point out, however, that the requirement of an address would be substantially met if the candidate included on his petition the name of the municipality if he is a resident of a municipality or the name of his county if he is a rural resident.

Your fifth question is:

"If a candidate is designated at a pre-primary convention called for such purpose by his political party, as provided, but if he instead desires to file by petition and does so, neglecting to {*201} file formal acceptance of said convention designation within the specified time, can he then be listed officially as a candidate for nomination to the office he may seek? In this connection, your particular attention is invited to Section 8 of the aforesaid Chapter 180, which apparently limits the filing by petition by aspirants for state or national office only to those who have not been designated by a pre-primary convention of the sort required by this statute to be held by major political parties in New Mexico."

First, let me cite the pertinent provision of law, which is Section 8 of Chapter 180, Laws of 1951:

"Any person desiring to become a candidate of any political party participating in the primary election for any office, the candidates for which have been nominated by certificate of designation by convention, **and who has not been so nominated by such convention**, may during the period commencing at 9:00 a.m. of the first Tuesday in March of each even numbered year and ending at 5:00 p.m. on the third day thereafter, file a declaration of candidacy in substantially the form provided in Section 4 hereof.

"At the time of filing such declaration, such candidate shall file therewith a petition for nomination signed by qualified electors who are members of his political party, which nominating petition shall be in substantially the form provided for nominating petitions in Section 4 hereof. Such nominating petition shall be signed in ink. If for offices elected from the state at large, such petition shall be signed by a number of qualified electors resident in one-half of the counties of the state equal to at least two per cent (2%) of the votes cast by his political party for the office for which said petition is being circulated, at the last general election held for such office, in each of the counties wherein such petition is circulated. If for offices elected from a district comprising more than one county, such petition shall be signed by a number of electors in each county in the district equal to at least two percent (2%) of the votes cast by his political party for the office for which such petition is circulated, at the last general election held for such office. If for offices elected from a single county, such petition shall be signed by a number of electors resident in such county equal to at least two percent (2%) of the votes cast by his political party for the office for which such petition is circulated, at the last general election held for such office.

"The electors signing such petition shall write opposite their names their respective post office address and the county and precinct wherein they are registered as an elector.

"Such nominating petition may consist of one or more sheets, to be fastened together in the form of one petition, but each sheet shall contain the same heading, which shall contain the name and address of the person seeking nomination, together with the designation of the office for which such person is seeking nomination. No elector shall be eligible to sign any such nominating petition unless such elector shall have been affiliated with a political party named in such petition for a period of at least six (6) months immediately preceding the signing of such petition, as shown by the registration books of the county clerk of the county wherein such elector resides, or in the office of the secretary of state.

"No person shall be eligible for nomination as a candidate by petition for any office to which {*202} this Act applies on any primary ballot, unless such person shall have been affiliated with the **political** party named in the nominating petition for not less than six (6) months prior to the signing of the declaration of candidacy, as shown by the

registration books of the county clerk of the county wherein such person is registered, or in the office of the secretary of state.

"Such declarations and nominating petitions shall in the case of offices elected from the state at large or from a district comprising more than one county, be filed in the office of the secretary of state. For county offices and legislative offices elected from one county, such declarations and nominating petitions shall be filed with the county clerk of the county wherein such candidate seeks election.

"Upon the filing of any nominating petition as in this section provided, the name of the candidate nominated therein shall be placed on the primary ballot for the office designated in said petition following the names of the candidates nominated by convention and by lot if there be more than one such candidate nominated by nominating petitions.

"Upon the filing of any such nominating petition, it shall be the duty of the secretary of state, as to such petitions filed in the office of the secretary of state, and of the county clerk, as to such petitions filed in the office of the county clerk, to forthwith investigate the qualification of the electors signing such petition as shown by the registration records, and the name of no candidate nominated by petition as herein provided shall be placed on a primary ballot unless signed by the number of qualified electors herein specified, as disclosed by the registration records."

The underlined words are the key to your question. A candidate's right to file a declaration and nominating petition is, by that language, predicated upon his not being designated by convention. A candidate who has been nominated by his party convention is thus not entitled under the law to file a declaration of candidacy and nominating petitions. Should a candidate nominated by his party choose to ignore that nomination and should he also fail to file his acceptance of designation, paying the fee required, he could not legally be given a place on the primary ballot for the fact of his having been nominated precludes him from filing by petition.

I trust that we have fully answered your inquiries.