

## Opinion No. 52-5547

June 16, 1952

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

**TO:** Secretary of State State of New Mexico Santa Fe, New Mexico. Attention: Mr. Joe Clark

{\*259} On May 29, 1952, you requested an opinion of this office as to the exact meaning and scope of Section 56-817, N.M.S.A., 1941 Compilation, as amended.

Section 56-817 reads as follows:

"Vacancy existing after primary -- Method of filling. -- If after a primary election for any cause, **including cases where there was no candidate for nomination after designation by convention, in the primary election**, there shall be a vacancy in the list of candidates of a political party entitled to representation on the official ballot necessary to fill all the offices provided for by law at the ensuing general election, such vacancy may be filled by the political party committee of the state or county, as the case may be, by filing the name of its candidate for such office within twenty-five (25) days after such primary with the officer with whom nominating petitions are to be filed, and when so filed, the name shall be placed upon the official ballot for the ensuing general election as the party's candidate for such office. Any vacancy thereafter occurring may be filled in like manner by the party committee at any time before the official ballots are printed. If a vacancy occurs after the ballots are printed, the name of the person so selected as a candidate to fill such vacancy be placed on said ballot by pasting the printed name of such candidate so selected and filed over the name of the candidate whose vacancy he fills on the official ballot."

{\*260} In 1949, the Legislature of the State of New Mexico amended Section 56-817, Chap. 123, Session Laws of 1949, adding the words underlined above.

In the case of State ex Rel. Van Schoyck v. Board of County Commissioners of Lincoln County et al., 46 N.M. 472, our Supreme Court construed the language of Sec. 56-817 as it existed prior to the 1949 amendment. The Court ruled that vacancies in the political parties' lists of candidates could be filled in the manner prescribed by Sec. 56-817 only when the vacancies occurred by reason of some cause arising after the primary election other than the failure of any candidates to seek the office in the primary election. The language of the clause amending the section added by the 1949 Legislature, "including cases where there was no candidate for nomination after designation by convention, in the primary election," is parenthetical and in no way modifies or requires any different interpretation to be made of the language of the statute as it existed before such amendment.

The basic language of the statute having been interpreted by our highest court, there can be no need for further inquiry.

I trust that this will answer your inquiry fully.