

Opinion No. 56-6376

February 3, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Richard F. Rowley, District Attorney, Ninth Judicial District, Clovis, New Mexico

Receipt is acknowledged of your letter dated January 25, 1956, in which you request a ruling from this office as to whether or not a certain person in your district who desires to be a candidate for a county office in the forthcoming primary election, and who changed his party affiliation with the County Clerk wherein he was registered as a qualified voter, will be eligible in view of Section 8, Chapter 218 of the Laws of 1955. You further state that the change of affiliation was made four days less than one year prior to February 6, the date that the proclamation will be issued, and that this particular candidate feels that in view of the fact that the law had not been enacted at the time he changed his declaration that he was acting in full compliance with the laws then in effect, particularly § 3-11-6 of the 1953 Compilation and § 3-11-16, and that as a consequence, the earlier acts would of necessity apply to him.

Section 8, Chapter 218 of the Laws of 1955, reads in part as follows:

"No person shall become a candidate for nomination for any office who has not been affiliated with the party in which he seeks office, as shown by his registration affidavit, for a period of not less than twelve months prior to the issuance of the proclamation herein required by the governor of the State of New Mexico. . . ."

Under Section 3-11-6, N.M.S.A., 1953 Compilation, it is provided that no person shall become a candidate for nomination for any office who has changed his party affiliation within six (6) months prior to the issuance of the proclamation herein required by the governor of the State of New Mexico.

Section 8, Chapter 218 of the Laws of 1955 hereinabove quoted, amended Sections 3-11-6 and 3-11-16 of the 1953 Compilation, and thereby repealed the said two statutes when they made the requirement in Section 8, Chapter 218 of the Laws of 1955 that no person shall become a candidate for nomination for any office who has not been affiliated with the party in which he seeks office, as shown by his registration affidavit, for a period of not less than twelve months prior to the issuance of the proclamation herein required by the Governor of the State of New Mexico. Said Section 8, Chapter 218 of the Laws of 1955 amends and supersedes Sections 3-11-6 and 3-11-16, of the 1953 Compilation. It has also made the statutes mandatory.

In the case of *Roberts v. Cleveland*, Secretary of State, reported in 48 N.M. at page 226, 149 P. 2d 120, the Court held:

"1. The statute providing that no person shall become a candidate for nomination for any office who has changed his party affiliation within 12 months prior to issuance of Governor's proclamation is not unconstitutional as denying to a candidate covered by the restriction the equal protection of the law. 1941 Comp. § 56-809, as amended by Laws 1943, c. 86, § 3."

It also held that:

"The 'closed primary' contemplates that each political party shall have the right to select its own candidates, and shall have such protection as the law can afford in exercising that right. **1941 Comp.**, § 56-809, as amended by Laws 1943, c. 86, § 3."

Also, in the case of Robert C. Dow v. Beatrice B. Roach, Secretary of State, on March 26, 1954, the Supreme Court of New Mexico, in a case that is not reported, in dismissing the Petition for an Alternative Writ of Mandamus filed by Robert C. Dow, held that a statute similar to the one in question was not unconstitutional as the statute merely prevented him, Dow, from running on the Democratic ticket for District Judge because he had not met the required qualifications, but that said statute did not prevent him from running on an Independent ticket.

It is obvious that in this case this person changed his affiliation four days less than one year and therefore does not meet the requirements of the above quoted law.

It is, therefore, the opinion of this office that the person you mention in your letter is not a qualified candidate for the county office in the forthcoming primary election for the reasons stated above.

Trusting this fully answers your inquiry, I remain

By Hilario Rubio

Assistant Attorney General