

Opinion No. 56-6419

April 16, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. J. C. Enloe, District Attorney, Seventh Judicial District, Socorro, New Mexico

In your letter of March 28, 1956, you ask whether a vacancy is created where the only candidate for a county office for a given political party participating in the Primary withdraws prior to the Primary.

Section 3-11-66, N.M.S.A., 1953 Compilation, Pocket Supplement, largely reenacted the old Primary Code on this subject. It does provide that a vacancy would be deemed to exist where the sole candidate of a political party died before the Primary. It made no change as to the law previously existing in case of withdrawal. Thus, the situation is the same as it was at the time the cases of *State ex rel. Van Schoyck v. Board of County Commissioners*, 46 N.M. 472, 131 P. 2d 278, and *Granito v. Grace*, 56 N.M. 652, 248 P. 2d 210, were decided. In both of those cases it was held that a vacancy did not exist which could be filled by the political party committee after the Primary.

It is our opinion that the same situation exists in the case which you present. Of course, if the withdrawal occurs after the Primary, a vacancy exists which may be filled by the appropriate committee.

By Walter R. Kegel

Assistant Attorney General