

## **Opinion No. 58-139**

June 24, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Honorable Natalie Smith Buck, Secretary of State, Santa Fe, New Mexico

### **QUESTION**

#### QUESTIONS

1. Do the candidate qualifications set forth in § 3-11-43, N.M.S.A., 1953 Compilation, apply equally to replacement candidates appointed pursuant to § 3-11-54, after the primaries?
2. If a nominee for Justice of the Peace dies or resigns after the primary, how can he be replaced as a candidate?

#### CONCLUSIONS

1. No.
2. By the county central committee.

### **OPINION**

#### ANALYSIS

Treating of your first question, we find § 3-11-43, N.M.S.A., 1953 Compilation, 1957 Supp., provides in part:

"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, or since his initial registration to vote in the state of New Mexico. Provided, that should the affidavit of any candidate have been canceled by reason of his service in the armed forces of the United States and consequent inability to vote in the last two preceding general elections, the fact of such cancelation shall not prohibit such person from becoming a candidate, if otherwise eligible.

No person shall be or become a candidate in any primary election for more than one office at such election.

No person shall become a candidate for nomination for any office who will not be eligible and legally qualified to hold such office at the beginning of its term.

Any person desiring to become a candidate of any political party participating in the primary for any office shall, or his agent shall, during the period commencing at 9:00 A.M., of the first Tuesday of March of each even numbered year and ending at 5:00 P.M., of the same day, file a declaration of candidacy, which declaration of candidacy shall be substantially in the following form:

\* \* \* \*

Such declarations shall in the case of precinct and county offices and legislative offices filled by one county be filed with the county clerk of the county wherein such declarants seek office. For offices filled by the state at large and districts comprising more than one county, such declaration of candidacy shall be filed with the secretary of state.

Any person making a false statement in his declaration of candidacy shall be deemed guilty of a felony, and upon conviction thereof shall be fined not less than one thousand dollars (\$ 1000) or be imprisoned for not less than one year, or more than five years, or both, and such sentence shall not be subject to suspension."

It is to be kept in mind such statute deals with **qualifications** for being a candidate in primary elections.

Turning to § 3-11-54, N.M.S.A., 1957 Supp., it provides:

"If for any cause a vacancy shall occur in the list of candidates of a political party entitled to be placed on the official general election ballot, after the primary, such vacancy may be filled by the political party committee of the state or county, or by the political party committees of counties comprising any district, as the case may be, by filing the name of its candidate for such office with the officer with whom declaration of candidacy are filed. State political party committee for the purpose of this section shall mean the state executive committee, selected as provided in the various party rules. County political party committee for the purpose of this section shall mean the county central committee selected as provided in the various party rules. District attorneys, district judges, and members of the legislature elected from more than one county shall be considered as district officers for the purpose of this section. 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. If the vacancy occurs or the substitute candidate's name is filed after the ballots are printed, the name of the person so selected as a candidate to fill such vacancy may 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.

In the event only one candidate has filed for the nomination for any office the candidate for which is to be nominated in accordance with the provisions of this act (3-11-36 to 3-

11-68) and he dies, then another candidate may be selected subsequent to the primary election and his name shall be placed upon the general election ballot in the same manner and as though the vacancy had occurred subsequent to the primary election."

Aside from certain definitions, the office of the last quoted section is to prescribe the ways and means of filling certain vacancies.

It is the opinion of this office that § 3-11-43 is a statute which is restricted to qualifications of candidates in primary elections. It is further our opinion that § 3-11-54 is a special statute confined in its subject matter to means of filling vacancies and that the qualification requirements set forth in the former statute do not apply to the filling of vacancies by political committee action. Consequently, so long as one is, at the time of selection under § 3-11-54, constitutionally qualified under Article VII, §§ 1 and 2, Constitution of New Mexico, we believe he may be selected by the appropriate political committee to fill the vacancy in question. Consequently, we hold in the negative in answering your first question.

In regard to your second question, we believe the answer is gained through process of elimination. In our opinion, the Legislature, by § 3-11-54, meant to provide the mechanics for filling any vacancy in the party ticket for the general election. Obviously, selection of a replacement for justice of the peace would not be by the state executive committee, nor would such be done by ". . . committees of counties comprising any district . . .". That leaves selection by the county central committee