

Opinion No. 62-130

October 16, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Alice King, County Clerk of Lincoln County, Carrizozo, New Mexico

QUESTION

We understand that a person seeks to have his name placed on the general election ballot as a candidate for justice of the peace without party designation. This gives rise to the following question.

QUESTION

Can a person who desires to be a candidate for justice of the peace in a general election be listed on the ballot without party designation?

CONCLUSION

No.

OPINION

ANALYSIS

The first thing to note is that the Primary Election Code (§ 3-11-36 through 3-11-68, N.M.S.A., 1953 Compilation) is not applicable in the present situation. That Code governs only political parties whose gubernatorial candidate polled at least fifteen percent of the votes at the preceding general election. Obviously, the person who desires to appear on the ballot without any party designation is not, for purposes of resolving the question posed, to be considered the candidate of any political party.

The question then is whether it is necessary in order to be a candidate (other than write-in) for State, county or precinct office in a general election that the person be the candidate of a political party.

When the various election statutes are analyzed, we think the conclusion is inescapable that candidates on the general election ballot must be those selected by a duly organized political party.

This requirement places no undue burden on minor parties since those who wish to nominate candidates whose names will appear on the general election ballot can do so by following the procedures set forth in Sections 3-12-1 through 3-12-8, N.M.S.A., 1953

Compilation, the first of which provides that "No political party shall be authorized to nominate candidates for public office in this state, unless the same be organized and governed as provided in this act." Nor does it prevent a person who is unable to organize a party, due to lack of support or otherwise, from being elected to and holding an office, since the write-in procedure is available.

Section 3-12-3, N.M.S.A., 1953 Compilation (P.S.) requires the filing of the party's rules and regulations with the county clerk at least forty days prior to the general election. This Section also requires the certification of candidates who have been nominated by methods other than a primary election and twenty members of the **party** must sign the certification. While this Section refers only to county offices, Section 36-1-1, N.M.S.A., 1953 Compilation, provides that justices of the peace will be elected "in the manner now provided by law for the election of state and county officers."

Section 3-3-7, N.M.S.A., 1953 Compilation, setting forth the requirements and form for ballots, makes it clear in paragraph 5 that party candidates are contemplated. See also Section 3-4-9, N.M.S.A., 1953 Compilation (P.S.).

It is certainly understandable that our election statutes do not contemplate "non-partisan" candidates on the general election ballot. Otherwise, anyone who so desired could be listed on the ballot as a candidate for office without party designation even though such person may have been defeated in the primary election. It takes no great amount of perception to foresee the chaotic conditions which could result from such procedure.

In discussing municipal elections, our Supreme Court distinguished them from general elections and stated that certain statutes governing the latter should not be construed to be applicable to municipal elections "when the practical effect of doing so would be to outlaw non-partisan tickets in such elections." **Hampton v. Priddy**, 50 N.M. 23, 168 P.2d 100.

We conclude then that any candidate appearing on the general election ballot must be the duly nominated candidate of a political party and that the candidate's political party must be designated on the ballot.