

Opinion No. 64-10

January 28, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General James V. Noble, Assistant Attorney General

TO: Leonard J. De Layo, Superintendent of Public Instruction, State Capitol Building, Santa Fe, New Mexico

QUESTION

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1. Are candidates for nomination for member of the State Board of Education to be nominated by designation by political party convention?
2. If such candidates are to be so nominated what procedure should be followed?
3. If not to be so nominated what procedure should be followed by nominees for the position of member of the State Board of Education?

CONCLUSIONS

1. No.
2. Not applicable in view of the answer to question No. 1.
3. See analysis.

OPINION

ANALYSIS

Article XII, Section 6 of our Constitution as amended in 1958 provides for a State Board of Education. The applicable portion of Section B of the provision reads as follows:

"B. The members of the State Board of Education shall be elected at the general election next following the adoption of this amendment. **One member shall be elected from each of the present ten judicial districts.** The initial board shall determine by lot from its membership three members to serve terms of six years. Thereafter, as the terms of the initial board members expire, their replacements shall be elected from the same districts for terms of six years. . . ."

Our primary election law was enacted in 1963. Section 3-11-3, N.M.S.A., 1953 Compilation (P.S.) provides in part as follows:

"All candidates for nominations for United States senator, United States representatives in Congress, and all elective state officers, except state legislative and **judicial district**, county and precinct officers to be made at any direct primary election, shall be placed on the direct primary ballot by certificate of designation by convention, as hereinafter provided"

Section 3-11-12, N.M.S.A., 1953 Compilation (P.S.) provides in part as follows:

"This Act (3-11-1 to 3-11-35) shall apply to the office of United States senator, United States representatives in Congress, and to all elective state, legislative, **judicial district**, county and precinct officers who are elected at the general election now held biannually upon the first Tuesday after the first Monday in November of each even numbered year: Provided, however, that candidates at the primary election for the offices of United States senator, United States representatives in Congress, and all elective state offices, **except** legislative, **judicial district**, county and precinct officers shall be by designation of such candidates by certificate of designation by convention of the political party that such candidates represent, all by nominating petition as in this act provided; Provided, further, that candidates for legislative, **judicial district**, county, and precinct officers in the state shall be by declaration of candidacy as hereinafter provided. . . . Nomination of candidates to fill vacancies and nominations of candidates to all offices to which this act does not apply and nomination of candidates for all offices by all political parties not coming under the provisions of this act shall be made as now is or may hereafter be provided by law." (Emphasis added).

No specific provision is made in our primary statute with reference to candidates for office of member of the State Board of Education and general rules of statutory construction must be resorted to in order to answer the question.

The primary law makes a distinction between candidates for state office; candidates for judicial district office; candidates for county office; and candidates for precinct office. Candidates for state office must be nominated by the state nominating convention composed of delegates from all counties in the state or by a declaration of nomination accompanied by a nomination petition signed by qualified electors throughout the state.

It is stated in 29 C.J.S. 149, Sec. 111, Elections as follows:

" **A primary election law should be liberally construed to effectuate its remedial purposes**, but it has been held that the interpretation should not go beyond the letter of the statute so as to restrict unduly the powers of the political party." (Emphasis added).

The courts of this state and of other states have generally construed election statutes. See Attorney General Opinion No. 63-139 dated October 21, 1963 and not yet published. In **State ex rel Read v. Crist**, 25 N.M. 175, 179 P. 629 our Court held that election laws were to be interpreted as directory rather than mandatory insofar as preservation and protection of the rights of the voters and candidates are concerned.

The classification set forth in the primary election statute is reasonable in view of the distinction in the offices being considered.

Since the primary election statute does not specifically mention the office of member of the State Board of Education, it becomes necessary to determine the legislative intent as disclosed by the statute to determine what procedure will have to be followed by a candidate for the office of member of the State Board of Education.

In the case of **State ex rel., Ward v. Romero**, 17 N.M. 88 our Court held that a district attorney was a state officer although elected from and serving in a judicial district. This case was decided long prior to the enactment of the legislation being considered and it must be presumed that the legislature had it in mind in enacting the primary election legislation. This presumption is strengthened by the classification adopted including the separation of officers of a judicial district from other state officers who are elected from the state at large.

In looking to the constitutional amendment creating the State Board of Education it provides that its members shall be elected from, reside in and represent, a particular judicial district, in much the same way as does a district judge or district attorney.

It would be a strained construction and one not justified under rules of statutory construction to hold that a candidate for the office of member of the State Board of Education must submit himself to a vote of the delegates of the entire state at large in the primary and only to the electors of his judicial district in the general election.

In Southerland Statutory Construction (3rd Ed.) Vol. II, P. 4704 p. 338 the general rule is stated as follows:

"A statute is to be construed with reference to its manifest object, and if the language is susceptible of two constructions, one which will carry out and the other defeat such manifest object, it should receive the former construction."

With this in mind as well as the rules of construction of primary election statutes laid down by our Court and the Courts of other states, the manifest object of the classifications of the primary election statutes is to require candidates for office, elected from a judicial district only, as contrasted to those elected from the state at large, to follow the provisions of Section 3-11-16, N.M.S.A., 1953 Compilation (P.S.) rather than to have to be nominated by a state wide primary convention.

A candidate for the office of member of the State Board of Education is not, therefore, nominated by the primary nominating convention.

The next question concerns itself with the procedure to be followed by a candidate for such office. Under the provisions of Section 3-11-16, supra the candidate shall between the hours of 9:00 A.M. and 4:00 P.M. on the First Tuesday in March of each even numbered year file a declaration of candidacy. This must be filed in the office of the

Secretary of State and must be filed by the candidate himself or by an agent acting solely in behalf of the particular candidate. The members of the Board being on a per diem basis, the declaration of candidacy shall be accompanied by a ten (\$ 10.00) dollar filing fee.