

Opinion No. 64-28

March 9, 1964

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

TO: Mrs. Alberta Miller, Secretary of State Santa Fe, New Mexico and All County Clerks

QUESTION

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May a candidate for nomination in the primary election withdraw as a candidate and, if so, what is the deadline for withdrawal?

CONCLUSION

Yes. The candidate must withdraw at least thirty days prior to the primary election.

OPINION

ANALYSIS

The statutes relating to primary elections (Section 3-11-1 et seq.) are silent on the matter of withdrawal by candidates. However, Section 3-11-20, N.M.S.A., 1953 Compilation (P.S.) provides in pertinent part as follows:

". . . Such primary election shall be held, the voters shall vote therein, the method of voting shall be followed, the votes counted and canvassed, and the returns made in the same manner as by law provided for general elections except as herein otherwise provided or inconsistent with the provisions of this act; and such primary elections shall in all respects conform to the laws governing general elections, except as herein otherwise provided. All provisions of law governing general elections in this state not in conflict herewith are hereby made applicable to and shall govern primary elections. The powers and duties conferred or imposed by law upon boards and judges and clerks of elections, canvassing boards and other public officials in connection with general elections, are conferred and imposed upon all such officers of primary elections and shall be exercised by them in connection with primary elections, except as otherwise herein provided or in conflict herewith."

Turning then to the laws governing general elections, we find that section 3-11-54.1, N.M.S.A., 1953 Compilation (P.S.) provides as follows:

"No candidate shall withdraw from a general election unless he withdraws at least thirty days prior to the election."

Since there is nothing in the statutes governing primary elections which is either in conflict with or inconsistent with the above provision, it governs withdrawals from primary elections by virtue of Section 3-11-20, supra. Thus since such withdrawals must be at least thirty days **prior** to the primary election, this deadline would fall on April 5, 1964. But since April 5th is a Sunday, it behooves any candidate wishing to withdraw to do so by the close of the business day on Friday, April 3, 1964.