

Opinion No. 68-48

May 8, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. William J. Perry Assistant District Attorney County Court House Las Cruces, New Mexico

QUESTION

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If an incumbent District Judge or District Attorney whose term still extends several years, dies or resigns after the primary election, but before the general election, how are the nominees of the major political parties selected to run in the general election for the unexpired term? Specifically which committee of the respective political parties selects the nominee?

CONCLUSION

See analysis.

OPINION

{*82} ANALYSIS

The first part of your question has been specifically answered by the Supreme Court of this State. In **State v. Fiorina**, 67, N.M. 366, 355 P.2d 497 (1960) the Supreme Court held that under a situation as you have described Section 3-11-54, N.M.S.A., 1953 Compilation, Supp. 1959 (since repealed) was controlling. That section provided in pertinent part:

"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 declarations of candidacy are filed."

The facts in **Fiorina**, supra, were that Chief Justice James B. McGhee retired after the primary election but before the general. Justice M. E. Noble was appointed to fill the vacancy and was certified by the executive committee of the Democratic State Central Committee as the candidate of the Democratic party for the general election to fill the unexpired term. The State contended that there was no way to place his name on the ballot. The Supreme Court held there was a vacancy as contemplated in Article XX,

Section 4 and that Section 3-11-54 noted above was authority for a major political party to fill such a vacancy.

Section 3-11-24, N.M.S.A., 1953 Compilation (P.S.) is substantially the same as Section 3-11-54. We are, therefore, of the opinion that **State v. Fiorina** is still controlling.

Therefore the answer to the first part of your request is that the proper committee selects the candidate. As to which committee should make the selection, we can offer no opinion. This is a matter that would be governed primarily by the rules of the political party involved and this office does not {83} write opinions on those rules. Their interpretation is a matter of party concern.

By: Roy G. Hill

Deputy Attorney General