

## Opinion No. 72-40

August 29, 1972

**BY:** OPINION OF DAVID L. NORVELL, Attorney General Prentis Reid Griffith, Jr.,  
Assistant Attorney General

**TO:** Honorable Turner W. Branch, State Representative, 4308 Avenida la Resolana NE,  
Albuquerque, New Mexico 87110

### QUESTIONS

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May a qualified elector change his party affiliation subsequent to the Primary Election of June 6th, 1972, and, thereafter, be appointed by the County Central Committee of the party to which he has changed his registration to fill a vacancy created by the death or resignation of a successful Primary candidate of that party?

#### CONCLUSION

Yes, but see analysis.

### OPINION

#### {\*67} ANALYSIS

In answer to your question, Section 3-8-17(A), NMSA, 1953 Comp. provides:

"No person who has changed his party affiliation within one (1) year prior to the filing date for the primary election shall become a candidate for nomination for any office. . . ."

Although this office has consistently been of the opinion that the provisions of Section 3-8-17(A), *supra*, are constitutional, at least one district court has disagreed. However, that section does not specifically apply to the situation posed in your question and in our opinion it should not be extended thereto.

Section 3-8-8, NMSA, 1953 Comp. provides as follows:

"3-8-8. Vacancy on general election ballot -- Occurring after primary. -- A. If after a primary election a vacancy occurs, for any cause, in the list of nominees of a qualified political party for any public office to be filled in the general election, the central committee of the political party, state or county as the case may be, may fill the vacancy by filing the name of its nominee for the office with the proper filing officer.

B. All such appointments to fill vacancies in the list of a party's nominees shall be made and filed prior to the time the general election ballots are printed. If the vacancy is caused by the death of a nominee subsequent to the printing of the general election ballots and five [5] days prior to the general election, the central committee may in like manner file the name of its nominee to fill the vacancy.

C. When the name of a nominee is filed as provided in this section, such name shall be placed on the general election ballot as the party's candidate for that office. In the case of a nominee appointed after the general election ballots are printed, such name shall be placed on the ballot by pasting the printed name of the nominee over the name of the candidate whose vacancy he fills on the general election ballot."

Since there is no other provision in the Election Code which provides that a nominee shall have been affiliated with the party which nominated him for any certain length of time, we must conclude that the legislature did not intend that any length of time should apply. See **State ex rel Barela v. New Mexico State Board of Education**, 80 N.M. 220, 453 P.2d 583 (1969). We must caution however that the provisions of Section 3-7-7, NMSA, 1953 Comp. would prohibit the printing of the name of a person who was a candidate for another party in the primary election on the general election ballot.