

Opinion No. 72-07

January 27, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Leila Andrews, Assistant Attorney General

TO: Mr. Toney Anaya, Governor's Administrative Assistant Office of the Governor, Executive Legislative Building, Santa Fe, New Mexico 87501

QUESTIONS

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Is it permissible, under the Presidential Primary Act, for the Democratic Party to elect delegates at the precinct, ward and county level, prior to June 20, 1972, which is the date set for State Canvassing Board certifications? Delegates selected would serve as delegates to the State's Convention on June 21, 1972, who, in turn, will elect delegates and alternates to the National Convention.

CONCLUSION

Yes.

OPINION

{*10} ANALYSIS

The Presidential Primary Act [Sections 3-8-33 to 3-8-43, NMSA, 1953 Comp.] was enacted to enable the voters of New Mexico to express their preference for the person to be the presidential candidate of their party. The Act, at Section 3-8-40, provides a method by which the Secretary of State certifies to the state chairman of each political party the names of the presidential candidates receiving the highest number of votes. "Each political party shall then select, as the party rules may determine, as many delegates and alternates to the national committee of that party."

"Such delegates, and each alternate for such delegates, shall be allotted to the two [2] candidates, or to the one [1] candidate and the unpledged category, as the case may be, in the same proportion that the total vote such candidate or category received bears to the total combined vote of both candidates, or of the one [1] candidate and the unpledged category, as the case may be. In computing the number of pledged or unpledged delegates any recipient of five-tenths or more delegate shall be entitled to one [1] additional delegate," [Section 3-8-4(C)].

As is made clear from the above quoted statute, each political party may determine its own method of selecting delegates as long as the delegates are allotted to the

candidates in the same proportion that the total vote such candidate received bears to the total combined vote in the primary election.

Therefore, it is our opinion that the party may elect delegates at the precinct, ward and county level prior to State Canvassing Board certification as long as delegates and alternates to the National Convention are not selected until after State Canvassing Board certification.