

## Opinion No. 80-26

August 1, 1980

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Jill Z. Cooper, Deputy Attorney General; Noelle L'Hommedieu, Schoen, Assistant Attorney General

**TO:** Shirley Hooper, Secretary of State, Santa Fe, New Mexico 87503

### ELECTIONS

A person whose affidavit of voter registration indicates that on January 1, 1980 he was a member of a political party may not file as an independent candidate for an office other than president in the November 4, 1980 general election.

### FACTS

On July 9, 1980, the United States District Court for the District of New Mexico, in **Anderson et al. v. Hooper**, Civil No. 80-432 M, entered an order granting a preliminary injunction enjoining the Secretary of State from refusing to accept the declaration of candidacy and nominating petitions of John B. Anderson as an independent candidate for the office of president of the United States. In its Memorandum Opinion and Order, the Court declared that Section 1-8-52 NMSA 1978, which requires independent candidates to file their nominating petitions on the first Tuesday in March, is unconstitutional. The Court further found that Sections 1-8-19 and 1-10-7 NMSA 1978 do not preclude an unsuccessful primary candidate from having his name printed on the general election ballot as an **independent**.

### QUESTIONS

May a person whose affidavit of voter registration indicates that on January 1, 1980, he was a member of a political party file as an independent candidate for an office other than president in the November 4, 1980, general election?

### CONCLUSIONS

No.

### ANALYSIS

The nominating procedures for independent candidates are set forth in the Election Code in Sections 1-8-45 through 1-8-52, NMSA 1978. Only Section 1-8-52 was challenged in **Anderson et al. v. Hooper**, *supra*, and accordingly, the rest remain in effect as written.

## **OPINION**

Section 1-8-48 requires an independent candidate for an office other than president to file a declaration of independent candidacy in which the candidate must state and swear that "I have declined to designate my party affiliation as shown by my affidavit of registration and I have not changed such declination subsequent to January 1 of the year of the general election at which I seek to be a candidate." The declaration of independent candidacy for the office of president does not require such a statement.

Thus, in order for a person to qualify as an independent candidate in the 1980 general election, his affidavit of registration on file {*\*164*} with the county clerk must show that since January 1, 1980, he has declined to designate a party affiliation. A person whose affidavit of registration shows that he was a member of a political party in New Mexico on January 1, 1980 cannot execute the declaration of independent candidacy prescribed by Section 1-8-48 and cannot therefore qualify as an independent candidate in the 1980 general election. To make a false statement on a declaration of candidacy is a felony.

In particular, a candidate who ran in the June 3, 1980 primary election cannot file as an independent candidate in the 1980 general election because he would have filed, under oath, a declaration of candidacy or statement of candidacy for convention designation stating that he was a member of a political party, as shown by his affidavit of registration, February 4, 1980, the date of the Governor's proclamation. Section 1-8-23 and Section 1-8-29 NMSA 1978.

## **ATTORNEY GENERAL**

Jeff Bingaman, Attorney General