

## Opinion No. 24-3786

October 9, 1924

**BY:** JOHN W. ARMSTRONG, Assistant Attorney General

**TO:** Requested by: Soledad Chacon, Secretary of State, Santa Fe, New Mexico.

### **Certificates of Nomination of Candidates for Public Office Must Be Filed With County Clerks and Not Secretary of State.**

Time for Filing Should Be Not Less Than Ten Days Prior to Election.

"Independent Ticket" Should Be Filed Notwithstanding No Emblem, Provided Same Was Nominated by Regular Convention and Certificate of Such Convention Regularly Filed.

### **OPINION**

{\*171} The proper authorities, with which to file certificates of nomination are the various County Clerks of the state. There is no law requiring or authorizing political parties or conventions to file certificates of nominations with the Secretary of State. Sec. 1995, Code 1915, is authority for filing such certificates with County Clerks.

County Clerks shall provide printed ballots for national, state and county officers in conformity with Sec. 2, Chap. 43, S. L. 1923, which provides:

Except as in this act otherwise provided, it shall be the duty of the county clerk of each county to provide printed ballots for every election for public officers in which electors, or any of the electors within the county, participate, and to cause to be printed on the ballot the names of every candidate whose name has been certified to or filed with the county clerk in the manner provided for in this act.

It would seem that certificates of nomination should be filed with County Clerks at least ten days before election, otherwise it would be impossible for County Commissioners to comply with the provisions of Sec. 1977, Code 1915. This Section provides:

The County Commissioners of each county shall, ten days before the election, by public proclamation and by publication in each of the two leading newspapers published in such county, give public notice of the object of the election, the officers to be voted for, the names of the candidates for each of said offices as the same are on file in the office of the county clerk.

It may be advisable to place the names on the "Independent Party" ticket without the emblem although there is some question as to whether or not the ticket is legal. There appears to be an emblem, duly filed with the Secretary of State, for the "Independent

Party." In the first place, it may be only discretionary with any political party as to whether or not it adopts and files an emblem in conformity with Sec. 2, Chap. 89 S. L. 1917. After such emblem is adopted and filed, however, the 10th Sub-Sec. of Sec. 8 Chap. 89 S. L. 1917 seems to contemplate the use of same by such party. This subdivision reads as follows:

The party emblem adopted according to the provisions of this act, shall be printed upon the ballot at the {*\*172*} head of the column containing the names of the candidates of the party adopting such emblem, and over the designating name of such party.

The fee chargeable by County Clerks for filing certificates of nomination, etc., appears to be that prescribed at the beginning of the 10th line of Sec. 1240 Code 1915, -- twenty-five cents. I find no other provision applicable. Sec. 4797 Code 1915 and Sec. 8 Chap. 12 S. L. 1915 make a charge incumbent and Sec. 17 of said Chap. 8 provides a penalty in case of failure of the Clerk in this connection.

County Clerks, we think, should see that certificates are authorized by conventions in conformity with Sec. 1995, otherwise the Clerk might be criminally liable under Sec. 21 Chap. 89 S. L. 1917.

We think certificates of nomination should not only be "certified to" but "filed with" the County Clerk. -- Sub-Sec. 2, Sec. 8, Chap. 89, S. L. 1917.