

## Opinion No. 42-4132

August 8, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. William F. Eaton Lawyer Socorro, New Mexico

{\*227} This acknowledges receipt of your letter of August 7, in which you request the opinion of this office on the following proposition: Can the fee which has been paid by a candidate for the filing of his declaration of candidacy be returned to him upon his withdrawal?

Section 9, Chapter 2, Special Session Laws of 1938 provides for the filing of declarations of candidacy together with petitions for nomination.

Section 10, Chapter 2, Special Session Laws of 1938 provides:

"Such declarations and petitions to be entitled to be filed shall be accompanied by a fee of three per centum (3%) of the first year's salary of said office.

"All fees collected from candidates for precinct offices, county officers and legislative offices comprising one county shall be remitted to the county treasurer of the county where the declaration is filed. All fees collected from candidates for district offices filled by more than one county shall be divided as hereinafter provided and remitted to the county treasurer of each county comprising the district. All other fees collected by the Secretary of State shall be divided between the counties of the state as hereinafter provided and remitted to the county treasurer of each county. All such funds in the hands of the county treasurer shall be designated "Primary Election Fund." Such funds shall be used for defraying the expenses of the primary election in the respective counties. If the fees so collected are not sufficient to defray all expenses of such primary election, any balance required shall be paid by the various counties as in the case of general elections. Any money left in such fund after paying the expenses of any and each primary election shall remain in such fund for use at the ensuing primary elections as the same may be needed."

Under the provisions of the New Mexico Election Law, set out above, the fee paid by the candidate is a fee for the privilege of "filing" his declaration. All the services required by said law with respect to "filing" have been performed by the proper officer. The services having been performed, the officer is entitled to the fee designated in Section 10 of the act.

I am unable to find any statute which authorizes or provides for the refund of any fees paid under Section 10 of Chapter 2, Special Session Laws of 1938.

In 29 C. J. S., Page 155, Section 114, it is stated:

"\* \* \* \* A candidate is not, on his withdrawal prior to the election, entitled to a return of the fee required of and paid by him. \* \* \*"

See also State vs. Brodigan 37 Nevada, 458-142 Pac. 520.

In view of the foregoing, I am of {\*228} the opinion that the fee which has been paid by a candidate for the filing of his declaration of candidacy cannot be returned to him upon his withdrawal.

By WILLIAM R. FEDERICI,

Asst. Atty. General