

Opinion No. 42-4143

August 24, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Scott H. Mabry Assistant District Attorney Albuquerque, New Mexico

{*237} In your letter of August 21, 1942 you relate that there are no candidates either on the Democratic or Republican tickets for the offices of justice of the peace and constable in several precincts in Bernalillo County. This being true, you desire to know whether or not ballots shall be distributed, as provided by Chapter 71, Laws of 1937, for the purpose of allowing the voters to write in the name of the candidate for either justice of the peace or constable of the several precincts.

In propounding the above question, you refer to Section 4, Chapter 153, Laws of 1939. I am firmly convinced that this latter section of the law does not apply to primary elections, and this conclusion on my part is fortified by reason of the provisions of Chapter 2, Section 19, Special Session Laws of 1938, which reads as follows, to-wit:

"It shall be the duty of the county commissioners at the time of the preparation of the general state and county ballot for a primary to prepare for each precinct a separate ballot, substantially in the form provided for the general primary ballot, on which shall be in like manner printed the candidates for precinct offices who have filed a declaration of candidacy and petition as in this act provided, and which said ballot shall be distributed to the election officials at the same time and with the election supplies for {*238} each precinct, and the provisions of this act shall in all things apply to such precinct primary. One precinct party ballot shall be handed each voter along with the ballot containing state, county and other candidates herein provided for and shall be voted in the same manner."

It is to be noted that the legislature, by the terms of this latter section of the law, makes it the duty of the county commissioners to print the names of candidates for precinct offices on separate ballots "who have filed a declaration of candidacy and petition as in this act provided." I find absolutely nothing in the law which would permit a party to be nominated at a primary election without a formal declaration of candidacy, as therein provided. Not only is there an absence of any such authority, but the law specifically prohibits any such procedure, and this for reasons too obvious to enumerate.

In view of the foregoing, I conclude that it is not necessary for separate ballots to be prepared by the board of county commissioners for those precincts in Bernalillo County in which no formal declaration of candidacy has been filed for precinct offices.

Trusting that the foregoing sufficiently answers your inquiry, I am

By HOWARD F. HOUK,

First Asst. Atty. General