

Opinion No. 42-4154

September 9, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Claron E. Waggoner District Attorney Socorro, New Mexico

{*249} In your letter of September 2, 1942, you ask "whether or not a candidate may file as independent after the primary election for the general election".

I interpret your question to be referring to a situation where a candidate in the primary election is defeated and wishes to run as an independent in the general election.

Your question is answered by that part of Section 815 of the Election Code of the State of New Mexico (Special Session Laws of 1938, Chapter 2, Section 15), which provides:

"* * * Any person defeated in said primary as a candidate for a nomination by any party shall **not** have his or her name printed upon the official ballot at the general election as a candidate for the same or any other office at said election, unless selected by his political party committee to fill a vacancy, as hereinafter provided."

You also ask whether or not it is necessary for the County Clerk to keep its office open twenty-four (24) hours after the polls close on primary election day. Section 733 of the Election Code (Laws of 1935, Chapter 147, Section 62), provides:

"The County Clerk by himself or some properly appointed deputy, assistant or employee shall keep the office of the County Clerk continuously open for twenty-four hours next after the closing of the polls at any general election for the purpose of receiving the ballot boxes, poll books and registration books."

Section 813 of the Election Code (Special Session Laws of 1938, Chapter 2, Section 13), provides in part as follows:

"Such primary election shall be held, the voters shall vote therein, the method of voting shall be followed, the votes counted and canvassed, and the **returns made** in the same manner as by law provided for general elections except as herein otherwise provided or inconsistent with the provisions of this act; and such primary elections shall in all respects conform to the laws governing general elections, except as herein otherwise provided. All provisions of {*250} law governing general elections in this State not in conflict herewith, are hereby made applicable to and shall govern primary elections. The powers and duties conferred or imposed by laws upon boards and judges and clerks of elections, canvassing boards and other public officials in connection with general elections, are conferred and imposed upon all such officers of primary elections and shall be exercised by them in connection with primary elections, except as otherwise herein provided or in conflict herewith."

In view of this section, it would appear that Section 733, previously cited, is equally applicable to primary elections as to general elections, and therefore the office of such County Clerk must be kept continuously open for twenty-four (24) hours after the closing of the polls at the primary election.

By HARRY L. BIGBEE,

Asst. Atty. General