

Opinion No. 42-4125

July 21, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Joseph F. Tondre Republican County Chairman Los Lunas, New Mexico

{*223} The Attorney General acknowledges receipt of your letter of July 17, 1942, wherein you have requested an opinion upon the following question:

Assuming a state senator files as a candidate in the primary election for his Party's nomination as Treasurer of the State of New Mexico, does that filing create a vacancy in the office of state senator?

Please be advised that in the opinion of this office, a vacancy has not been created, and in view of the provisions of Section 96-107 and Section 96-105, New Mexico Statutes Annotated, 1929 Compilation, a vacancy will not exist until the state senator accepts and undertakes to discharge the duties of the incompatible office of state treasurer. At that time he should resign, in accordance with the procedure outlined in Section 134-101, New Mexico Statutes Annotated, 1929 Compilation.

Trusting that the foregoing sufficiently answers your inquiry, I am,

By GEO. H. HUNKER, Jr.

Asst. Atty. General