

Opinion No. 42-4158

September 25, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Tibo J. Chavez Assistant District Attorney Belen, New Mexico

{*252} In response to your question regarding whether or not the name of a candidate may be written in at a general election if such candidate's name did not appear in either of the ballots at the primary election, I submit the following:

Section 41-305 of the 1929 Compilation provides:

"* * * but nothing herein shall prevent any voter from writing on his ballot the name of any person for whom he desires to vote for any office in the manner hereinafter provided, and such vote shall be counted the same as if such name were printed on the ballot. * * *"

Section 41-311, Subsection 6 of the 1929 Compilation provides:

{*253} "If you wish to vote for a person whose name is not printed on the ballot, write his name on the blank line under the designation of the office in any column and make a cross in the first [] to the right of the name that you write in."

In response to your second question regarding whether or not an independent party may have the name of a candidate printed on the general election ballot, which independent party failed to be represented in the ballots for the primary election, I call your attention to Section 804 of the Election Code (Special Session Laws of 1938, Chapter 2, Section 4):

"This act shall apply to all political parties for any of whose candidates there was cast at the last general election held preceding the time of the holding of such primary election, as many as fifteen per centum (15%) of the total number of votes cast for the candidates for governor by all parties at such preceding general election."

In view of this section, the primary law does not at this time apply to the independent party and such party may nominate candidates for the general election by convention.

However, I also call your attention to Section 302 of the Election Code (1929 Compilation, Section 41-302, as amended by Laws of 1938, Chapter 6) which provides:

"The chairman and secretary of every state political convention shall, not less than forty days previous to the election, certify to the Secretary of State the names of all candidates nominated at such convention and the office for which each candidate has been nominated. The Secretary of State, shall upon receipt of such certificate, certify

the names of such candidates and the office for which each candidate has been nominated and the political party by which nominated to the county clerk of each county of the state."

By HARRY L. BIGBEE

Asst. Atty. General