

Opinion No. 42-4150

September 5, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Honorable John E. Miles Governor Santa Fe, New Mexico

{*242} The following is an opinion in answer to your question concerning the amount each state candidate is allowed to spend in both the primary and the general election campaigns.

Section 825 of the Election Code of the State of New Mexico provides:

"Candidates for nomination at any primary election shall be limited in amount of expenditures for the said primary election to the following amounts respectively, exclusive of any sums of money expended for stationery, postage, printing, and necessary personal, traveling or subsistence expenses; for United States senator, not exceeding thirty-five hundred dollars (\$ 3500.00); for member of congress or governor, not exceeding twenty-five hundred dollars (\$ 2500.00); for supreme court judge, not exceeding one thousand dollars (\$ 1000.00) for any other office for which the electors of the entire state shall vote not exceeding fifteen hundred dollars (\$ 1500.00); for district judge, district attorney or state senator, not exceeding two hundred and fifty dollars (\$ 250.00); for state representative, not exceeding two hundred and fifty dollars (\$ 250.00); for any office for which the electors of a county or a subdivision of the county shall vote, other than state representatives, not exceeding two hundred and fifty dollars (\$ 250.00)."

This section answers your question as far as expenses in the primary are concerned. Section 706 of the Election Code of the State of New Mexico provides:

"No candidate for any public office at any general or special election shall pay out, expend or contribute in order to secure or aid in securing his election or the election of any other person, or in aid of any political party, in any campaign, any money or other valuable thing amounting in the aggregate, exclusive of traveling and hotel expenses, to more than ten per centum of one year's salary or compensation provided by law for the incumbent of the office which he seeks, provided, however, that in the case of candidates for the state legislature, both senate and house of representatives, the expenditures, exclusive of traveling and hotel expenses, shall not exceed the sum of one hundred fifty dollars by any one candidate.

"Any contribution for any of the purposes hereinabove set forth, made by the wife, parent, brother, sister, child, aunt, uncle, niece, nephew or cousin of any candidate shall be deemed to be a contribution of said candidate within the prohibition of this section. (Sec. 48-A, Ch. 147, Laws of 1935 as amended by Ch. 3, Laws of 1938)."

This section does not have any bearing on expenses of candidates in the primary campaigns, but is a limitation on the amount that any candidate may expend during the general election campaign.

As to the additional question concerning when it is necessary for candidates to file with the {*243} Secretary of State their reports of money spent in the primary campaign, I submit the following:

Section 823 of the Election Code of the State of New Mexico (Special Session Laws of 1938, Chapter 2, Section 23) provides that such reports shall be filed within 10 days after any primary election. It is also noted that the following section provides that if such report not filed, a candidate shall not receive the Certificate of Nomination and have his name printed on the official ballot at the ensuing general election until such report is filed and provides additional penalties for failure to file such reports.

It is noted that no place in the primary act are any provisions found by which can be inferred that the Legislature contemplated that more than one report of expenses would be required of any candidate.

It is, therefore, my opinion that such part of Section 707 of the Election Code of the State of New Mexico (Section 41-707, New Mexico Statutes Annotated, 1929 Compilation) that requires a report to be filed not less than five, nor more than 10 days prior to an election, has been superseded so far as primary elections are concerned, by Section 823 of the Election Code of the State of New Mexico.