

Opinion No. 43-4222

February 2, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Alfonso A. Sanchez, Santa Rosa, New Mexico

We are in receipt of your letter of February 1, 1943, in which you ask an opinion of this office as to whether or not any Democrat running for membership on the municipal school board can, if he so desires, have his name placed upon the ballot under the Democratic emblem, even though this be contrary to the wishes of the majority of the Democratic party. Reference is made to an opinion of this office dated January 30, 1943, addressed to Mrs. Georgia L. Lusk, concerning the nomination of candidates for municipal school elections. In that opinion we said:

"With this in mind, it will be seen that the Legislature could no have intended this construction, since by virtue of Section 58-805, municipal school board or city elections are not included within the primary scheme, and so the major political parties could not nominate even though they chose to do so."

Our purpose in making this statement was to point out that since the major political parties could not nominate candidates for such offices by primary, that they must necessarily have the right to nominate their candidates by convention, or in any other manner they saw fit.

It is only in the event that the Legislature imposes rules and regulations upon the political parties as to their method of nomination that the political party itself does not have absolute discretion as to what person shall run as its candidate (See 49 C. J. 1076), and it has only been since the advent of the primary system that any limitation has been placed upon the right of a political party to nominate as it sees fit. Since municipal school board elections are not included within the primary scheme, there is no limitation upon the right of the party to nominate whoever it may choose, as this is solely a party question to be decided by the party under such rules or regulations as it may adopt.

It is, therefore, my opinion that the Democratic party in Santa Rosa, New Mexico, may nominate such person as it sees fit, under such rules and regulations as it may adopt, to run on the Democratic ticket under the Democratic emblem; and that no other person, unless authorized by the Democratic party, has the right to have his name placed under the Democratic emblem.

I am enclosing herewith a copy of our opinion dated January 30, 1943, addressed to Mrs. Georgia L. Lusk.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General