



STATE OF NEW MEXICO
DIANNA J. DURAN
SECRETARY OF STATE

March 22, 2012

Attorney General Gary King
P.O. Drawer 1508
Santa Fe, New Mexico 87501

HAND DELIVERED

Re: The Validity of Nominating Petitions Filed with the Secretary of State

Dear Attorney General King:

I am writing to request an opinion from you regarding a challenge received by our office concerning the validity of nominating petitions filed in my office on March 20, 2012.

On March 21, 2012, Representative Thomas Garcia, who is a candidate for State Senate District 8, called the Secretary of State's office. He informed me that he had reviewed the nominating petitions submitted by his opponent, Senator Pete Campos.

Representative Garcia noted that, in the spaces provided at the top of the nominating petition, Senator Campos' petitions listed the office sought as "State Senate," but did not contain any designation of the District. Having pointed this out, Representative Garcia then referenced Section 1-8-31(D) NMSA 1978.

That provision of the statute states:

The following information shall be listed in the appropriate space at the top of the nominating petition before the petition is signed by any voter: the party affiliation of voters signing the petition, the candidate's name, the candidate's address, the candidate's county of residence and the office sought by the candidate, which shall include the district or division of the office sought, if applicable. A nominating petition, including all signatures on the petition page, shall be invalid if any of the preceding information is not listed before the petition is signed by a voter or if any of the preceding information is altered. (emphasis added).

The entire subsection (D) was added to the statute by the Legislature in 2011 as part of Senate Bill 403. The 2012 Primary Election is the first election in which this section has been in effect, and subsection (D) has never been considered by the New Mexico courts.

Based on subsection (D), Representative Garcia asserts that the Secretary of State cannot certify

Senator Campos as a candidate under § 1-8-26(E), which provides:

No candidate's name shall be placed on the ballot until the candidate has been notified in writing by the proper filing officer that the declaration of candidacy, the petition, if required, and the certificate of registration of the candidate on file are in proper order and that the candidate, based on those documents, is qualified to have the candidate's name placed on the ballot.

New Mexico courts have considered the provisions of § 1-8-31, prior to the adoption of subsection (D), and held that:

"the burden is on the challenger to demonstrate that specific signatures should not be counted, and [the court is] "committed to examine 'most carefully, and rather unsympathetically' any challenge to a voter's right to participate in an election, and will not deny that right 'absent bad faith, fraud or reasonable opportunity for fraud.' " Ruiz v. Vigil-Jiron, 145 N.M. 280 (S. Ct. 1980), citing Simmons v. McDaniel, 101 N.M. 260, 263, 680 P.2d 977, 980 (1984) (quoting Valdez v. Herrera, 48 N.M. 45, 53, 145 P.2d 864, 869 (1944)).

I am requesting your opinion concerning Representative Garcia's assertion that nominating petitions which do not contain district designations are invalid, pursuant to §1-8-31(D).

If you conclude that all Nominating Petitions which do not contain district designations are not valid please advise the Secretary of State as to which of the following course of action she should pursue:

- (1.) Secretary of State ("filing officer") sends written notice to each candidate [pursuant to §1-8-26 (E)] that their Nominating Petition(s) are invalid pursuant to §1-8-31(D) and that they will not be placed on the ballot and further that each candidate that feels aggrieved by this ruling has an opportunity to challenge the decision by filing a petition with the District Court within 10 days of the notification pursuant to §1-8-26 (F); or
- (2.) Secretary of State ("filing officer") certifies the Nominating Petition(s) and allows the candidates to placed on the ballot, allowing any voter that feels aggrieved by the decision to file a court action challenging the nominating petition(s) pursuant to §1-8-35 (A).

Under § 1-8-26(E), the proper filing officer is to notify candidates that they are qualified to have their names placed on the 2012 Primary Election ballots no later than Tuesday, March 27, 2012. Therefore, I am requesting that you provide your opinion no later than the close of business on Friday, March 23.

The following candidates have submitted Nominating Petitions that would also be subject to the same challenge raised by Representative Garcia, specifically, that they failed to list the District applicable to their candidacy:

Representative Rick Little

Senator Sue Wilson Beffort
candidate Joshua Madalena
Senator Tim Jennings
Commissioner Vince Bergman
Representative Dianne Hamilton
Representative James Roger Madalena
candidate Louis Luna
candidate Guadalupe Cano
Representative Rodolpho Martinez
candidate Karen Montoya

If you have additional questions or concerns, please feel free to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "Dianna J. Duran". The signature is fluid and cursive, with a large initial "D" and "J".

Dianna J. Duran
Secretary of State