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ARIZONA ATTORNEY GENERAL

May 13, 1952  
Opin. No. 52-139

Mr. Barry De Rose  
Gila County Attorney  
Globe, Arizona

Dear Mr. De Rose:

This opinion is supplementary to our opinion No. 52-120 rendered April 28, 1952 which had to do with the question of whether or not an individual may become a candidate for city councilman in a general election other than by nomination in a primary election. We indicated in that opinion that Section 55-1021, ACA 1939 would be applicable and that by following the provisions of said section, an individual might have his name placed upon the ballot in a general election without having been nominated by a party in a primary election.

Since the rendition of this opinion, the question has been raised as to whether or not Chapter 123 of the Session Laws of the Second Regular Session of the Twentieth Legislature has amended Section 55-1021, ACA 1939 or repealed said section. The applicable portion of Chapter 123 is part (c) of Section 22 thereof which reads as follows:

"If no candidate is nominated in the primary election for a particular office, then no candidate for that office for that party may appear on the general election ballot. However, any vacancy occurring due to death of any candidate after a primary election may be filled by the political party committee of the state, county or city as the case may be by filing the name of the candidate to fill such vacancy with the officer with whom nomination petitions are filed at any time before the official ballots are printed, anything in the present law to the contrary notwithstanding."

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It is to be noted that the prohibition contained in the above paragraph (c) is that no candidate for the office "for that party" may appear upon the general election ballot. This does not, we believe, mean that no candidate for that office "for that party or as an independent candidate" may appear on the general election ballot. In other words, Section 55-1021 is a provision by which an independent candidate may have his name placed upon the general election ballot without going through the nomination procedure required of a political party candidate. We do not believe that it is reasonable to say that paragraph (c) of Section 22 of Chapter 123 quoted above impliedly repeals Section 55-1021. An implied repeal is not favored and is only resorted to when there is no reasonable way to allow both statutes to stand. We believe that in this case, it is reasonable that the prohibition against a candidate appearing upon the general ballot for a party without having been nominated in the primary election can be allowed to stand even though Section 55-1021 provides that a candidate for an office, without any party affiliation, can be allowed to have his name placed upon the general election ballot.

Very truly yours,

FRED O. WILSON  
Attorney General

CHARLES C. STIDHAM  
Assistant Attorney General

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