

ALAN BIBLE, *Attorney-General*.
By GEORGE P. ANNAND, *Deputy Attorney-General*.

156. Elections—If there Is No Party Contest to be Determined at Primary, Nominees for Office Should be Placed on General Election Ballot.

CARSON CITY, August 9, 1944.

MESSRS. GEORGE F. WRIGHT AND JOHN W. BONNER, *District Attorneys*, *Elko and White Pine Counties, Elko and Ely, Nevada*.

GENTLEMEN: This will confirm our telegram to you from this office on August 8, 1944, reading as follows:

It is our opinion that under subdivision (b), section 12 and section 22 of the Primary Election Law, six (or eight) Democratic candidates for Assembly need not be placed upon primary ballot, but entire six (or eight) should be certified as nominees for office of Assembly and placed on general election ballot in view of the fact that there is no Republican nor Independent candidate for Assembly. Formal opinion follows.

Section 22 of the Primary Election Law, quoting that part relevant to the question involved, provides as follows:

“* * * *provided*, that if only one party shall have candidates for an office or offices for which there is no independent candidate, then the candidates of such party who receive the highest number of votes at such primary (not to exceed in number twice the number to be elected to such office or offices at the general election) shall be declared the nominees of said office or offices.”

Under that proviso if the only candidates for an office are all of the same party and there is no independent candidate for that office, and the number of candidates filed for that office, and the number of candidates filed for that office exceed in number twice the number to be elected at the general election, there is a party contest to be determined at the primary election. At such primary the candidates not to exceed twice the number to be elected at the general election receiving the highest number of votes shall be declared the nominees, not of their party, but the nominees of said office.

The second proviso in the section should be considered in order to arrive at the intention of the Legislature.

* * * *provided further*, that where only two candidates have filed for a partisan nomination for any office on only one party ticket, and no candidates have filed for a partisan nomination on any other party ticket for the same office, to which office only one person can be elected, the names of such candidates shall be omitted from all the primary election ballots, and such candidates' names shall be placed on the general election ballots.

The two candidates under this proviso do not exceed in number twice the number to be elected, hence there is nothing to be determined at the primary, and there is no party contest. The same principle is exceed twice the number to be elected.

Subdivision (b) of section 12 of the Primary Law, which was amended in 1935, two years later than the last amendment, to section 22, provides as follows:

Where there is no party contest for any office the name of the candidate for party nomination shall be omitted from the ballot and shall be certified by the proper officer as a nominee of his party for such office.

The intention of the Legislature is to avoid any unnecessary proceedings, when there is nothing to be determined at the primary election. Should the names of the six or eight candidates in question be placed on the primary ballot, the voting at such election would be unnecessary, as all six or eight, being a number not in excess of twice the number to be elected would be declared to be the nominees of the office of Assembly.

Reading subdivision (b) of section 12 in pari materia with section 22, it is our opinion that the names need not go on the primary ballot should all be placed on the general election ballot.

A rule of interpretation as stated by the court in *Roney v. Buckland*, [4 Nev. 45](#), is as follows:

In the interpretation of any phrase, section or sentence of a statute, the first thing to be ascertained is the ultimate and general purpose of the Legislature in the enactment of the law; and when that is known or ascertained, every sentence and section of the entire Act should be interpreted with reference to such general object, and with a view to giving it full and complete effect, extending to it all its logical and legitimate results.

There is no reason that the proviso, where only two candidates filed on only one party ticket and no other candidates have filed that the two names shall be omitted from the primary ballot, should not extend to those cases where more than one candidate is to be elected to an office and not more than twice the number have filed.

In the case of *State v. Beemer*, [51 Nev. 192](#), where provisos within section 22, were determined, the court said:

There could be no substantial reason why the Legislature should intend to limit its proviso to the nominees for an office, where more than one candidate is to be elected, in preference to the office or offices where one candidate is to be elected.

This principle applies to the instant problem.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

157. State Highway Department—Maintenance Second Street Underpass, Reno.

CARSON CITY, August 14, 1944.

MR. ROBERT A. ALLEN, *State Highway Engineer, Carson City, Nevada*.

Attention: H.D. Mills, Assistant Highway Engineer.

DEAR MR. ALLEN: This will acknowledge receipt of your letter dated August 3, 1944, enclosing a copy of an agreement with the County Commissioners of Washoe County, together with an opinion of the District Attorney of that county with respect to the agreement, and a request from you for an opinion of this office on the statement of facts set forth below. This will likewise confirm the oral opinion which we gave to you during our conference on August 14, 1944, in this office.

The Washoe County Commissioners have brought up the question of whether the maintenance of the Second Street underpass of the Southern Pacific tracks is an obligation of the county or the State. The county has maintained this structure since its completion under an