Opinion No. 52-5497

February 20, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Beatrice B. Roach Secretary of State Santa Fe, New Mexico

{*212} This is in reply to your request of February 15th for an opinion as to the applicability of Section 56-811 or 56-802b to the method of determining the order in which candidates for office appear on the primary ballot.

Section 56-811 New Mexico Statutes Annotated states:

. . . "The names of the candidates for each office upon the ballot, shall be arranged and printed upon the ballot in the order in which said candidates filed their declaration of candidacy for nomination."

This language was in the originally enacted primary law of 1938, which was Chapter 2 of the Special Session Laws of that year. The amendments to the primary election law enacted in 1949 and in 1951 did not in any way change the language of this foregoing section. However, Section 2 of Chapter 180, Laws of 1951, which is Section 56-802b of the New Mexico Statutes Annotated, states:

. . . "Such candidates selected by the convention shall be listed under the caption 'candidates designated by convention' and candidates nominated by petition shall be listed on the ballot immediately under such candidates designated by the convention and under the caption 'candidates nominated by petition.' The candidates nominated by petition shall be placed in position on the ballot as selected by lot in a manner to be provided by the secretary of state or the county clerk in the cases of state and county candidates respectively."

The language of these two sections of the primary election code presents a direct conflict. As I stated previously the amendments to our primary law in 1949 and 1951 made no specific mention of the repeal or amendment of the earlier provisions of Section 56-811. However, as stated in **50 Am. Jur. at 539:**

"The fact that an act does not contain either a general or specific repealing clause does not prevent it repealing a prior act; an act may be repealed by implication as well as by expressed terms. A portion of a statute may also be repealed by implication. The doctrine of repeal by implication rests on the ground that the last expression of legislative will ought to control, in that the legislature intended to give effect to its enactment."

Applying these maxims to the immediate problem it is my opinion that we must find the legislative intent to be that the provision of Section 56-802b, as enacted in 1951, was

intended to control. It is my opinion that the legislative intent was to establish a new method of placing the names of candidates upon primary ballots. In the case of those candidates nominated by petition and declaration of candidacy, it is my opinion that the Legislature intended to do away with the old system of scrambling for a position in line before the Secretary of State's office or the County Clerk's offices.

Following the criterion of legislative intent it is my opinion that the enactment of Section 56-802b *{*213}* impliedly repealed the requirements of Section 56-811 of New Mexico Statutes Annotated with regard to the placing of candidates' names upon the primary ballots.

I trust that this will answer your inquiry fully.