

**Opinion No. 57-281**

October 30, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Paul L. Billhymer, Assistant Attorney General

**TO:** Mr. Norman Hodges, District Attorney, Sixth Judicial District, Silver City, New Mexico

**QUESTION**

QUESTION

Under Section 3-2-21 (4), N.M.S.A., 1953 Compilation, 1957 Pocket Supplement, is it mandatory on the part of the Board of Registration (of voters), to undertake to cancel the affidavits of registration of all registered voters who have not voted at the two (2) last preceding general elections, as shown by the notation of election officials on their affidavits?

CONCLUSION

Yes.

**OPINION**

ANALYSIS

The pertinent provision of the statute is as indicated in your letter, Section 3-2-21 (4), N.M.S.A., 1953 Compilation, Pocket Supplement, being Section 3, Chapter 148, Laws 1955, which reads as follows:

"The board of registration shall, commencing on the 3rd Monday of October of each odd numbered year, cancel the affidavit or registration;

. . .

"(4) when the person so registered has not voted at the two (2) last preceding general elections, as shown by the notation of election officials on his affidavit. Where it appears that the election officials in any voting division or precinct have not made the proper notations of ballot numbers on the affidavits of the voters of such voting division or precinct, the poll books for the last two (2) preceding general elections shall be examined and the affidavits of any person who it appears has voted in one of such elections, as shown by such poll book, shall not be canceled.

"Before such affidavits of registration shall be actually canceled, notice of such proposed cancellation shall be mailed to the last known address of such elector at least ten (10) days prior to cancellation."

This office rendered an Opinion, No. 4566, dated August 28, 1944, which held that this section prior to the 1955 amendment was not mandatory. This opinion reasoned that if the election officials knew that the party was still a resident that its duty would not be fulfilled by canceling the registration inasmuch as the person could immediately re-register. The opinion also relied upon the fact that election officials do not always properly note on the affidavit of registration the fact of voting at a general election, and therefore the affidavit of registration can not be relied upon as evidence of not having voted.

It is to be noted that the Legislature made a change in this statute in 1955 by providing that poll books can be investigated to determine whether a person had in fact voted if it appeared that the affidavit of registration had not been properly marked by the election officials. This would indicate that the Legislature intended that whenever a person fails to vote in two general elections that such person's registration should be canceled. The Legislature provided that an additional check should be made if the election affidavit would cause Board of Registration to doubt that it was properly marked, and if the poll book showed that party had "voted in one of such election the registration was not to be canceled."

The Legislature went further and provided that a notice of cancellation should be mailed to the person's last known address ten days prior to such cancellation. It is our conclusion from the fact that the Legislature changed the law that it intended that the Board of Registration would cancel affidavits of registration upon a finding of any of the grounds listed in this section, and that there is no discretion in the Board as to whether the affidavit of registration will be canceled. This certainly does not work a hardship upon the person failing to vote. For the statute provides that such person shall have notice and the person could certainly reregister in order to protect his right of franchise. The evident purpose of the Legislature was to provide a means for clearing the registration list and to provide for election officials an active list of registered voters.

We, therefore, conclude that the Board of Registration is obligated to cancel the registration affidavit upon a finding of any of the grounds listed in Section 3, Chapter 148, Laws 1955.