

Opinion No. 57-70

April 10, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Honorable W. R. Kegel, District Attorney, First Judicial District, Santa Fe County
Court House, Santa Fe, New Mexico

QUESTIONS

QUESTIONS

Section 22-7-18, N.M.S.A., 1953 Compilation, provides a fee of 50c for recording a divorce decree Has the above section been superceded by Section 71-1-10, NMSA, 1953 Compilation, Pocket Supplement?

CONCLUSION

No

OPINION

ANALYSIS

From the question above it is indicated that the two statutes cover the same subject matter, to-wit; the recording of legal instruments, but which are at variance as to the fee to be charged. Specifically, Section 71-1-10, NM SA, 1953 Compilation, Pocket Supplement, lists definite fees for the recordation of certain legal instruments (not including within the list the recording of a divorce decree) and then concludes in part as follows:

" . . . For all instruments recorded, the recording fee for which is not fixed herein, a charge shall be made of \$ 1.75 for the first 700 words and 25c for each additional 100 words, except where the instrument is photo-copied, in which event a charge of \$ 1.75 shall be made for each page, or portion thereof in the instrument."

The above section, in lieu of Section 22-7-18, supra, would base the recording fee of a divorce decree at a minimum of \$ 1.75 with an additional charge for extra words. Section 22-7-18, N.M.S.A., 1953 Compilation, provides for a recording fee of 50c and reads:

"The county clerks of the counties of the state of New Mexico shall upon payment to then of a fee of 50c record a certified copy of any such decree so filed with them and shall procure and maintain a separate book in which such decrees shall be recorded".

Section 71-1-10, supra, was enacted in 1939, and amended in 1953, and 1955, to increase the fees charged for recording. The act and its amendments do not refer to Section 22-7-18 or repeal it directly. Section 22-7-18, which is devoted to the recording of divorce decrees alone, was enacted in 1947.

We are of the opinion that Section 71-1-10, does not supercede Section 22-7-18. As indicated above there has been no express repeal, by Section 71-1-10, nor was any reference made to Section 22-7-18. Repeal of a statute by implication is so generally unfavored that citation of cases is not necessary. In the case of statutes which deal with the same subject matter the rule is laid down in 82 C.J.S., Section 292, as follows:

"As a general rule there can be no implied repeal of one act by another unless both acts deal with, or relate to, the same subject matter. However, a statute is not to be deemed repealed merely by the enactment of another statute on the same subject. **The question is one of legislative intent.** One or two affirmative statutes on the same subject matter does not repeal the other if both can stand, as where they are cumulative. The court will, if possible, give effect to all statutes covering, in whole or in part, the same subject matter where they are not absolutely irreconcilable and no purpose of repeal is clearly shown or indicated."

See also *Ellis vs. New Mexico Construction Company*, 27 N.M. 312, 201 P. 487, and *Territory vs. Riggle*, 16 N.M. 713, 120 P. 318.

As an indication of legislative intent as pointed out previously in this opinion, Section 22-7-18, was specially enacted, and limited in its scope to the recording of a divorce decree, at a time when Section 71-1-10 had already become part of the law in New Mexico. In subsequent amendments to Section 71-1-10, no mention is made of Section 22-7-18.

By way of conclusion, it is the opinion of this office that Section 71-1-10 does not supercede Section 22-7-18, and that our Legislature intended that both should stand as cumulative law on the same subject.