

Opinion No. 60-41

March 9, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mrs. Betty Fiorina Secretary of State Santa Fe, New Mexico

QUESTION

QUESTION

Is it permissible to destroy duplicate affidavits of registration cancelled prior to the amendment of Section 3-2-23, N.M.S.A., 1953 Comp. (PS), by Chapter 87, Section 1, Laws of 1959?

CONCLUSION

Yes.

OPINION

{*395} ANALYSIS

Section 3-2-23, N.M.S.A., 1953 Comp. (PS), provides, as pertinent to your question, that when an affidavit of voting registration is cancelled by either the Board of Registration or the County Clerk, the original (or the first copy, along with the original, when the original is mutilated, illegible or seriously damaged) shall be retained permanently, but first copies may be subsequently destroyed by the County Clerk. Until this section was amended by Chapter 87, Section 1, Laws of 1959, all affidavits of registration in the possession of the County Clerk had to be filed alphabetically in a binder designated "Cancelled Affidavits of Registration."

It is clear that all first copies cancelled after the effective date of Chapter 87, Section 1, Laws of 1959, may be destroyed, unless such copies need to be permanently filed when the original is mutilated, illegible or seriously damaged. Your question asks whether this same procedure may legally be followed regarding affidavits cancelled prior to such date.

It goes without need to cite authority that statutes generally are given a prospective rather than a retrospective effect, i.e., they apply only to occurrences dating subsequent to their effective dates. As was said in **Board of Education v. Boarman**, 52 N.M. 382, 199 P. 2d 998, citing from **Gallegos v. A. T. & S. F. Ry. Co.**, 28 N.M. 472, 214 P. 579, 582:

"The general rule is that statutes are presumed to have only prospective effect. They are not given retroactive or retrospective effect, unless such intention on the part of the legislature is clearly apparent which cannot otherwise be satisfied."

On the other hand, statutes should be construed in the most beneficial way which their language will permit, to prevent absurdity, hardship, or injustice. **State v. Southern Pacific Company**, 34 N.M. 306, 281 P. 29; **Hahn v. Sorgen**, 50 N.M. 83, 171 P. 2d 308.

With all due regard to the rule that statutes are not to be construed as having a retrospective effect unless such is clearly intended by the Legislature, our opinion is that § 3-2-23 as now constituted should be applied to registration affidavits cancelled prior to the effective date of Chapter 87, Section 1, Laws of 1959. The reason the section was amended seems obvious, i.e., to unclutter the records of duplicates which serve no real value as long as the original is retained. Under the old law, the County Clerk was required to keep all cancelled affidavits (usually an original and one copy) in a file, presumably permanently. Now, the clerk need only retain the original, except in cases of mutilation, illegibility or serious damage. To hold that this uncluttering process may only be applied to affidavits cancelled recently and not to affidavits cancelled many years ago would, in {*396} our opinion, be the epitome of absurdity. The very fact that a copy need now be filed only when mutilation, etc., has occurred, strengthens our views.

Therefore, we conclude that the present Section 3-2-23, insofar as it pertains to the keeping of a permanent file of cancelled affidavits, applies retrospectively to affidavits of registration cancelled prior to the effective date of Chapter 87, Section 1, Laws of 1959.

By: Philip R. Ashby

Assistant Attorney General