

## Opinion No. 63-08

February 1, 1963

**BY:** OPINION Of EARL E. HARTLEY, Attorney General

**TO:** Walter R. Kegel, Esq. Attorney for Santa Fe Municipal Schools P. O. Box 2081  
Santa Fe, New Mexico

### QUESTION

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1. May a voter needing assistance be accompanied into the voting booth by a person of his own choice in addition to the poll clerks in municipal as well as general elections?

#### CONCLUSION

Yes, but see Analysis:

### OPINION

#### {\*20} ANALYSIS

Section 3-10-22 (1953) excludes municipal school board elections from the operation of the general election laws unless other provision is made by law. However, Section 73-10-5 (1961 P.S.) provides that municipal school board elections will be called, conducted, returned and canvassed in the same manner as county elections. Section 14-14-3 (1953) requires that municipal elections be conducted in the same manner as county elections.

In Opinion of the Attorney General No. 57-14, January 1957, we held that Section 14-4-3, *supra*, provided an exception to Section 3-10-22, *supra*. In that opinion we also said that inasmuch as county elections are conducted in accordance with the general election code, school board elections should be conducted in {\*21} a like manner. It is apparent, therefore, that the general election code applies to municipal school board elections unless the statutes specifically provide otherwise. See also **Telles v. Caroter**, 57 N.M. 704, 262 P. 2d 985 (1953).

Prior to its being amended, New Mexico Statutes Annotated, § 3-3-30 (1953) provided:

"(1) . . . Any registered elector who shall declare before the judges of election that he is unable to mark his ballot on account of blindness, defective eye-sight, or other physical disability which prevents his marking his ballot, may be accompanied in the polling place by the two (2) poll clerks, who may assist him in marking his ballot, but **by no other person or persons.**

(2) Any qualified elector who shall declare before the judges of election that he is unable to mark his ballot without assistance because he is unable to read either the English or the Spanish language sufficiently well to do so, shall be assisted in marking his ballot by the two (2) poll clerks, **but by no other person or persons.** . ." (Emphasis supplied)

In 1959 Section 3-3-30 was amended to allow the person desiring assistance to have two poll clerks **and** one person of his own choice assist him in voting.

Section 3-3-20 (15), N.M. S. A., (1953) which is the section containing instructions for conducting elections, provides:

"Where any voter requires assistance because of blindness, defective eye-sight, physical disability which prevents marking the ballot, or inability to read either the English or Spanish language sufficiently well to do so, the judges shall require him to take the oath on the form headed 'Affidavit for Assistance' included with the election supplies. Either judge may swear the voter. The voter must sign or mark such affidavit. All blanks must be filled in by the election officials, and the affidavit, after being completed, must be deposited in the ballot box. Such voter shall then be assisted by two (2) poll clerks who shall accompany the voter into the booth and in the presence of each other assist said voter in marking his ballot. No judge, clerk, challenger, party worker, sheriff, deputy sheriff, or other person shall go into any booth while occupied by an elector marking his ballot, or mark any voter's ballot, except the two (2) poll clerks as herein provided. Provided that if any voter so assisted shall so request, he may show his marked ballot to his party challenger to ascertain whether it has been marked as the voter instructed. . ."

It is apparent to us that the legislature when it amended Section 3-3-30 neglected to amend Section 3-3-20 (15) so that the two sections would not conflict. It is, however, a standard rule of statutory construction that when two statutes are in direct conflict, the statute which was last enacted by the legislature repeals by implication the older statute. Section 3-3-30 repeals by implication Section 3-3-20 (15) insofar as the two are in conflict.

In summation, it is our opinion that the general election laws apply to municipal school board elections unless the statutes provide otherwise. Therefore, in a municipal school board election, a voter who is in need of assistance within the meaning of Section 3-3-30 (1961 P.S.) is entitled to have one person of his own choice assist him in casting his vote.

By: Joel M. Carson

Assistant Attorney General