

## Opinion No. 64-23

March 6, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

**TO:** Alberta Miller, Secretary of State, State Capitol Building Santa Fe, New Mexico

### QUESTION

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Upon the filing of a declaration of candidacy for an office, can a married woman whose husband is deceased file under his name or must she file under her maiden name, and not indicate her marital status?

#### CONCLUSION

She must use her given name and married name, and she may, in addition, use her maiden name.

### OPINION

#### ANALYSIS

There are a number of statutory provisions relating to the **registration** of married women. Section 3-2-48, N.M.S.A., 1953 Compilation, enacted in 1945, provides that "If a married woman is registered in her maiden name, she shall be allowed to vote by using her maiden name, and both the maiden name and the married name shall be inserted on the poll book by the election officers."

Prior to 1963, Section 3-3-20, N.M.S.A., 1953 Compilation, provided as follows:

"Should the name of any married woman be erroneously entered in the registration book by her given name instead of under the name of her husband, in entering such name upon each poll book, the name shall be entered under the name of her husband, as: Brown, Mrs. John M., not: Brown, Ida B."

The 1963 session of the legislature rewrote this provision to read: "Names of married women entered under given name, maiden name and married name. The name of any married woman shall be entered (on the poll book) as shown on her affidavit of registration." Chapter 306, Laws 1963. And Chapter 148, Laws 1963, amended Section 3-2-10 to read as follows:

"Notwithstanding any other provisions of the Election Code, upon this act taking effect a married woman, who registers after the effective date of this act, shall sign her original affidavit of registration using her given name, maiden name and married name and shall not indicate her marital status in her signature."

We see then that henceforth a married woman is to register using her given name, maiden name and married name and that it is to be entered the same way on the poll book.

Section 3-11-7 and 3-11-16, as enacted in 1963, provide that a candidate is to file a declaration of candidacy using his or her "name". Now while the death of a spouse dissolves a marriage (*People v. Service Recognition Board*, 403 Ill. 442, 86 N.E. 2d 357), the fact remains that the widow still retains her married name.

Thus in her declaration of candidacy a widow is to use her given name and the name of her deceased spouse, i.e., her married name. She may, in addition to the given name and married name, also use her maiden name. In the interest of uniformity this is what we would suggest since this is now the way that married women are to be registered and their names entered on the poll book. See Opinion Nos. 57-309, 58-61, 60-1.