**Opinion No. 67-16**

February 1, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. Philip T. Manly Attorney New Mexico Legislative Council State Capitol Building Santa Fe, New Mexico

## QUESTION

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Would the enactment of House Bill 2 of the first session of the twenty-eighth legislature accomplish a repeal of the pre-primary convention system and restore the direct primary system?

CONCLUSION

Yes.

## OPINION

*{*20}* **ANALYSIS**

House Bill 2 to which you refer provides as follows:

"AN ACT RELATING TO ELECTIONS; REPEALING LAWS 1963, CHAPTER 317, AS AMENDED; AND REVIVING ALL LAWS AMENDED OR REPEALED THEREBY.

Section 1. REPEAL AND REVIVOR. -- Laws 1963, Chapter 317, as amended, is repealed, and all laws amended or repealed thereby are revived as they existed prior to its enactment."

The common law rule as set forth in **Milligan v. Cromwell,** 3 N.M. 557, 9 Pac. 359 and reiterated in **State v. Elder,** 19 N.M. 393, is that "unless it is made clear by the law repealed in the repealing *{*21}* act that the original law is not thereby to be revived, the original act is revived."

The same principle was enunciated in **Gallegos v. Atchison, T.& S. F. Ry. Co.,** 28 N.M. 472 in the following language:

". . . This question must be determined by the commonlaw rule which is in force in this state, and has been the rule of practice and decision since the year 1876 . . . At common law the familiar rule is that, when a statute is repealed which repealed a former statute, the first act is revived, and again becomes effective without any formal words on

the part of the Legislature to that effect. This is always true in the absence of a contrary legislative intent expressly declared or necessarily to be implied from some legislative expression."

The Court warned, however, that:

"This rule does not apply where the new legislative enactment, by which the repealing statute is repealed, consists of a revision or a substitute for the original act, or where new legislation upon the subject of the original act is therein adopted, as this would be clearly contrary to an intention on the part of the Legislature to revive such original act. It would manifest an intention, not to revive, but to legislate anew upon the subject. . . ."

Such was also stated in **Atlantic Oil Producing Co. V. Crile,** 34 N.M. 650.

Section 1-2-3, N.M.S.A., 1953 Compilation, enacted in 1912, turned around the method of determining the legislative intent by providing:

"Whenever an act is repealed, which repealed a former act, such former act shall **not** thereby be revived, **unless it shall be expressly so provided."** (Emphasis added).

House Bill 2, here in question, does repeal Laws 1963, Chapter 317, which in turn repealed the statutes providing for direct primary elections. And it does expressly provide that the former provisions (direct primary statutes) are revived. House Bill 2 does not attempt to substitute new legislation on the subject and thus does not fall within the prohibition mentioned in the **Gallegos case,** supra. House Bill 2 does meet the requirements of Section 1-2-3, supra, and, in fact, would also have met the common law requirements. Accordingly, House Bill 2 would revive the direct primary provisions repealed by Laws 1963, Chapter 317.

By: Oliver E. Payne

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