

## Opinion No. 69-10

February 18, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Oliver H. Miles, Assistant Attorney General

**TO:** Honorable Max Coll, State Representative, Legislative Executive Building, Santa Fe, New Mexico

### QUESTIONS

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If HB 139, amending the Primary Election Code passes, will it be constitutional in the face of Article II, Section 19 of the New Mexico Constitution, when considered with Section 3-11-6, N.M.S.A., 1953 Compilation (P.S.) which requires a person to be a member of a political party for one year prior to the Governor's proclamation as a prerequisite to filing for office?

#### CONCLUSION

Yes.

### OPINION

#### {\*17} ANALYSIS

Article II, Section 19 of the New Mexico Constitution provides:

"No ex post facto law, bill of attainder, nor law impairing the obligation of contracts shall be enacted by the legislature."

An ex post facto law is defined as: ". . . one which operating retrospectively and on **penal or criminal matters only**, renders a previously innocent act criminal . . ." C.J.S., Section 435 Vol. 16A, 139. Thus HB 139 is not constitutionally objectionable as an ex post facto law because it is neither penal nor criminal in nature.

A bill of attainder is defined as: ". . . a legislative act inflicting punishment without a judicial trial." C.J.S., Section 452, Vol. 16A, 162. HB 139 is not constitutionally objectionable as a bill of attainder because its purpose is not to inflict punishment.

Last of all, we find nothing in HB 139 which indicates any impairment of the obligation of contracts.

HB 139 may, if enacted, have some retroactive effect in that it would not permit one filing for office in the 1970 election to change his party affiliation. This is so because the Governor's Proclamation calling a primary election is to be issued on the first Monday in February of 1970 according to Section 3-11-15.1 of HB 139, and the person filing for office must certify affiliation with his political party {*\*18*} for at least one year preceding that date if his political party received as many as 15% of the total number of votes cast for governor in the preceding general election.

This provision would not preclude one from seeking office, it would merely prevent his changing of party affiliation between now and the next election. There is no interference with a vested right and therefore no constitutional objection to HB 139.