

## Opinion No. 72-24

May 9, 1972

**BY:** OPINION OF DAVID L. NORVELL, Attorney General James B. Mulcock, Jr.,  
Assistant Attorney General

**TO:** Honorable Celina V. Sanchez, County Clerk, County of Rio Arriba, County  
Courthouse, Tierra Amarilla, New Mexico 87575

### QUESTIONS

#### FACTS

The duly appointed registration officer filed his declaration of candidacy to be a candidate in the June Primary. He received no notification regarding his status as a deputy registration officer, consequently he continued to register qualified electors. He has submitted several affidavits of registration, all of which were completed by him subsequent to his filing his declaration of candidacy for the June Primary, to the County Clerk for entry into the registration books.

#### QUESTIONS

Should the County Clerk accept these affidavits of registration, and enter them in the registration books?

#### CONCLUSION

Yes.

### OPINION

#### {\*42} ANALYSIS

The critical statutory section in answering this question is 3-4-41, NMSA, 1953 Comp. Subsection A of this section provides:

If any deputy registration officer becomes a candidate by filing for an office to be voted upon at any election held pursuant to the Election Code, his appointment as deputy registration officer is canceled and his position is deemed vacant.

If this subsection stood alone, it {\*43} would appear that the legislature conclusively intended that the deputy registration officer automatically vacated his position by filing a declaration of candidacy. However, such is not the case as subsections C and D of this section further state:

C. A notice of cancellation signed by the chairman of the board of registration and attested to by the county clerk under the seal of the clerk shall be immediately mailed to a deputy registration officer whose appointment is canceled.

D. Upon the receipt of a notice of cancellation of appointment the deputy registration officer shall immediately cease his duty and shall return all registration materials in his possession to the county clerk. Failure to comply with this subsection is a petty misdemeanor.

It is our opinion that subsections C and D manifest the legislature's intent that subsection A is not self executing in canceling the deputy registration officer's appointment. Contrariwise, it is our opinion that the notice of cancellation prescribed in subsection C, must be given before the appointment is canceled and before the deputy must cease his duty.

In reaching this conclusion we note that the effect of not entering these registrations on the registration books would be tantamount to not allowing the registrant the opportunity to vote in the June Primary. Such a result would contravene the general purpose of the election process as stated in Section 3-4-38A, **supra**, in which the purpose of the Registration Act is stated to be "to encourage and facilitate the registration of qualified voters" and mandates that the act shall be liberally construed to accomplish that purpose. Although Section 3-4-41, **supra**, is not included in the mandate of Section 3-4-38, **supra**, it is our opinion that the purposes stated therein should be given effect as the New Mexico Courts have consistently held that election laws should be liberally construed to accomplish their purpose and technicalities should not be permitted to deprive voters of their franchise. See **State ex rel Palmer v. Miller**, 74 N.M. 129, 391 P.2d 416 (1964).

Consequently, it is our opinion that those qualified electors who were registered by the deputy registration officer subsequent to that officer's filing a declaration of candidacy for a county office should be accepted by the County Clerk and enrolled on the registration books thereby allowing the qualified electors to vote in the upcoming election.