

Opinion No. 73-65

September 11, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Betty Fiorina Secretary of State State of New Mexico Legislative Executive Building Santa Fe, New Mexico 87501

QUESTIONS

FACTS

Pursuant to a power of attorney executed to his wife in 1966, a member of the military was registered to vote with the Santa Fe County Clerk while he was absent from the State on military duty. The date of registration is November 11, 1967.

QUESTIONS

Is the affidavit of registration valid where executed by a person other than the voter acting pursuant to a power of attorney?

CONCLUSION

Yes.

OPINION

{*128} ANALYSIS

Chapter 152, Section 2, Laws of 1939, as amended by Chapter 56, Section 4, Laws of 1953, and compiled as Section 3-2-6, N.M.S.A., 1953 Comp., prior to the Election Code revision of 1969, stated as follows:

"Any qualified elector serving in the military forces of the United States may be registered by any immediate member of his or her family under the following conditions:

(a) The qualified elector shall execute and acknowledge before a person authorized to administer oaths, a power of attorney authorizing a person named therein to register such elector.

* * * "

It is clear that this law authorizes the registration of a qualified elector serving in the military forces of the United States by any immediate member of his family, and that this law was in effect November 11, 1967, the date of registration of the voter here.

The "Election Code" enacted as Chapter 240, Laws of 1969, provides a method whereby qualified electors, temporarily out of the State, may subscribe to an affidavit of registration before a person authorized to administer oaths. Upon receipt of the completed affidavit of registration the county clerk must ascertain if such affidavit is to be filed or rejected in accordance with the Election Code, as with all other affidavits of registration. It appears that the legislature attempted to simplify the registration process for all qualified electors by replacing the method set forth above as Section 3-2-6, with this absentee registration provision.

However, it is clear that even though the law allowing registration of military personnel by means of a power of attorney was repealed in 1969, registrations executed pursuant to the law prior to its repeal remain valid. Thus, the individual in this factual situation became a "qualified elector", see Section 3-1-4, N.M.S.A., 1953 Comp., on November 11, 1967 and remains so at this date.