

Opinion No. 57-284

November 1, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Honorable Natalie Smith Buck, Secretary of State, Santa Fe, New Mexico

QUESTION

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May the Secretary of State furnish steel cabinets to County Clerks for retention of cancelled affidavits of registration?

CONCLUSION

Yes.

OPINION

ANALYSIS

The first statute which must be considered is Section 3-2-23, N.M.S.A., 1953 Compilation providing that:

"When an affidavit of registration is canceled by either the board of registration or the county clerk, as herein provided, the clerk shall stamp both affidavits of registration in his possession 'Canceled,' showing the date and reason for cancellation, and file the same alphabetically in a **binder** designated 'Canceled Affidavits of Registration.'" (Emphasis ours.)

This immediately raises the question of what kind of "binder" was meant. If the Legislature intended "binder" to mean those with built-in locks, operated by keys, then it would surely have so stated. In this connection, compare Section 3-2-9, N.M.S.A., 1953 Compilation, under which, we must admit, the registration records must ". . . **substantially consist . . .**" (Emphasis ours) of the binders as therein described. Apparently, the logical inference is that exceptions do exist.

This very statutory comparison compels us to conclude that the Legislature did not mean "binder" to mean the same thing in Section 3-2-23, supra, as it did in Section 3-2-9, supra.

In our opinion, reference must be made to Section 3-2-41, N.M.S.A., 1953 Compilation, which reads:

"All forms, blanks, records, files or other equipment necessary for the carrying out of this act, (3-2-5 to 3-2-34, 3-2-36 to 3-2-47, 3-3-5, 3-6-10) shall be prescribed and furnished by the secretary of state, by and with the consent and approval of the state board of finance, provided, that nothing contained therein shall be contrary to any specific provision of this act. The secretary of state shall furnish to the county clerk of each county a sufficient number of all such blanks, forms and records printed in the English language and such number printed in the Spanish language as shall be necessary for each county and shall furnish a set of instructions to each registration officer. All such supplies shall be delivered to the registration officers by the county clerk." (Emphasis ours.)

and which we believe not only clarifies the ambiguity of Section 3-2-23, supra, but which vests a broad discretion in the Secretary of State as to what "equipment necessary" to carry into effect the registration laws shall be furnished county clerks. Under the last cited statute, the Secretary of State may consider numerous factors in selecting equipment "necessary" for this or that county under the registration laws, including, but not limited to, population of the county, the number of registered voters therein, the number of cancelled affidavits of registration therein, and funds available. This discretion is vested in your office, and is not to be exercised by any other executive officer of this State.

Of course, if we were confronted with the sole, isolated question of whether "binder" means "steel cabinets", we would decline to so hold, but the issue here is not so simple, involving as it does various statutes casting light on the problem. As we view the relevant statutes, read together in the light of surrounding circumstances, we are drawn to the conclusion as above given.

Nor do we wish to place this opinion on any apparent ground of narrow, technical statutory construction. We are cognizant that to limit Section 3-2-23, supra, to locked, record binders of substantial quality, operated by keys, would place a severe burden on the public treasury, particularly in regard to supplying the more populous counties. In the absence of compelling statutory language, we cannot so interpret a statute, since they must be construed in the most beneficial way of which their language is susceptible in order to prevent absurdity, hardship, or injustice, and so as to **favor public convenience and the public interest**. Cox vs. City of Albuquerque, 53 N.M. 334, 207 P. 2d 1017; State vs. Llewellyn, 23 N.M. 43, 167 P. 414; State vs. Southern Pacific Co., 34 N.M. 306, 281 P. 29.