

## **Opinion No. 57-309**

November 27, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,  
Assistant Attorney General

**TO:** Mrs. Natalie Smith Buck, Secretary of State, Santa Fe, New Mexico

### **QUESTION**

#### QUESTIONS

1. "Shall a candidate be allowed to file only as his name is shown on his affidavit of registration?"
2. "In case of a married woman, may she employ her maiden name as well as her married name; for example, Mary Jones Hutton?"
3. "In the case of a divorcee or remarried divorcee, what surnames may she use in filing as a candidate?"

#### CONCLUSIONS

1. No.
2. Yes.
3. See opinion.

### **OPINION**

#### ANALYSIS

Section 3-11-43, N.M.S.A., 1953 1957 P.S., in providing for a "declaration of candidacy", requires substantial completion of the form, which in part specifies: "(here insert candidate's true name)". By Attorney General's Opinion No. 6399, 1956, the afore quoted language is construed to permit, at least, a married woman to use either her required registered name or her own given name. We concur with the aforesaid opinion, in that substantial compliance is met in such instance.

In all cases, however, it may be pointed out that ". . . you are justified in placing only the legal name of the candidate upon the ballot, . . ." Attorney General's Opinion No. 5956, 1954.

In the matter of registration affidavits, § 3-2-10 specifically requires, in part, that:

"All married women shall register according to the name of the husband and not by the wife's given name."

No similar requirement is found in connection with declaration of candidacy. Accordingly, and in keeping with Attorney General's Opinion No. 6399, 1956, it is our opinion that a candidate is not required to file a declaration of candidacy in the identical name shown on his or her affidavit of registration, but may use a legal given name or initials.

Your second question was specifically considered in Attorney General's Opinion No. 6399, *supra*. As stated in that opinion,

"It is therefore the opinion of this office that a wife may use the name by which she is registered, or **her own given name**, in the declaration of candidacy and substantially conform with the certificate of filing."

A married woman's "true name" is, by general rule, defined at 38 Am. Jur. 600 as follows:

"A married woman's name consists, in law, of her own Christian name and her husband's surname, marriage conferring on her the surname of her husband."

and continuing:

". . . the courts having quite generally recognized the use of the middle name or initial of her maiden name to be proper, as against the use of the husband's middle name or initial, the same as in the case of her Christian name. The prefix 'Mrs.' is a men title and no part of her legal name."

Accordingly, it is our opinion that a married woman may use her given Christian and maiden name with her husband's in a declaration of candidacy.

In the case of a divorcee, it is pointed out at 17 A Am. Jur. § 882 that:

"Since ordinarily there is no property in a name and a person may assume any name he or she desires, the name which a divorced woman shall bear would seem to be a matter of choice with her."

It is, therefore, our opinion that a divorcee may use either her maiden or married surname.

Your final inquiry concerns remarried divorcees. In such case, we must again look to the definition of a married woman's legal name, 38 Am. Jur., *supra*. Here we find that the wife takes the husband's surname, but may retain her Christian and maiden names in addition thereto. No suggestion is made that a married woman may retain more than one married name at a time.

Accordingly, it is our opinion that a remarried divorcee may use only the surname of her present husband.