

## **Opinion No. 58-56**

March 17, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,  
Assistant Attorney General

**TO:** Mr. Dan Sosa, Jr., District Attorney, Third Judicial District, Second Floor Court  
House, Las Cruces, New Mexico

### **QUESTION**

#### QUESTION

Can a person who was registered in 1951 as a Republican and who did not vote in succeeding elections, but who was not purged and subsequent thereto in 1956 merely re-registered as a Democrat without filing an application to change party affiliation but who had re-registered more than twelve months prior to the Governor's proclamation, run as a candidate on the Democratic ticket?

#### CONCLUSION

No.

### **OPINION**

#### ANALYSIS

The factual situation in the question above raises two basic questions of law on the subject of election registration. The first question is whether failure to vote automatically revokes a voter's registration, and secondly, whether reregistering with another party serves to cancel an original registration in a given party without the necessity of applying for a change in party affiliation. We are of the opinion that both questions must be answered in the negative.

Section 3-2-37, N.M.S.A., 1953 Compilation, appears to be determinative on the first question raised above. This section relates:

"The registration of a voter shall be permanent for all purposes during the life of such person so registered unless and until the affidavit of registration is canceled for any of the causes specified in this act."

In view of the foregoing section, it seems that a person's registration is permanent unless his registration is cancelled in accordance with the provisions of the Election Code. In the instant case, it, therefore, follows that a person who registered as a

Republican in 1951 would continue to be so registered until that person takes an affirmative act to have his registration of party affiliation changed.

As indicated above, the second question raised is whether reregistering with a different party serves to cancel an original registration without applying for a change in party affiliation in accordance with § 3-2-25, N.M.S.A., 1953 Compilation. Section 3-2-25 clearly designates the method to be used in changing party affiliation. Apparently the Legislature felt that a party affiliation should be changed in a specific manner and by sworn affidavits in order to eliminate irregularities which could arise if that method was not followed. It is a basic tenet of law that the Legislature does not perform a useless act. If a person could change his party affiliation by merely reregistering in another party, such action would effectively negate the provisions of § 3-2-25. It is, therefore, our opinion that the only proper and legal way to change one's party affiliation is to do so in accordance with the provisions of § 3-2-25.

By way of conclusion, we are of the opinion that the individual in the instant case is not a proper party to run as a candidate on the Democratic ticket under the factual situation presented for consideration.