

Opinion No. 60-01

January 6, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Jack L. Love Assistant District Attorney Fifth Judicial District Lovington, New Mexico

QUESTION

QUESTIONS

1. Is a divorced woman a "married woman" within the meaning of § 3-2-10, N.M.S.A., 1953 Compilation, relating to registration of electors for elections?
2. Is a widow a "married woman" within the meaning of the same section?

CONCLUSIONS

1. No, but see analysis.
2. No, but see analysis.

OPINION

{*333} ANALYSIS

Section 3-2-10, N.M.S.A., 1953 Compilation, relating to the entering of names of electors on the registration affidavit provided for by § 3-2-7, reads as follows:

"3-2-10. Entering registrants' names on affidavits -- Married woman to use husband's given name. -- The names of persons registering must be in the proper spaces provided therefor, 'Mr.,' 'Mrs.' or 'Miss' following each name. **All married women shall register according to the name of the husband and not by the wife's given name.**" (Emphasis supplied).

Thus, if Mary Jane Doe is married to John A. Doe, she must register as Mrs. John A. Doe and not as Mrs. Mary Jane Doe.

We turn now to your first question. Unquestionably, a woman who has become, under the laws of this State, divorced from her husband cannot be considered as a married woman. Under our statutes, as found in §§ 22-7-1 through 22-7-22, N.M.S.A., 1953 Compilation, the decree of divorce completely severs the bonds of matrimony between husband and wife, since a limited divorce from bed and board, known at common law as a divorce a mensa et thoro, has never been recognized in New Mexico. **Poteet v.**

Poteet, 45 N.M. 214, 114 P. 2d 91. Therefore, if a woman is divorced in this State or absolutely divorced in any other jurisdiction which grants a divorce recognized by this State, she must, under § 3-2-10, register in her given name, and not according to the name of her husband, because she is not a "married woman". If, however, she is only divorced a mensa et thoro in a jurisdiction allowing such a divorce, she must register according to the name of her husband, since such a limited divorce does not sever the marriage bonds. **Poteet v. Poteet**, supra; **Radermacher v. Radermacher**, 61 Ida. 261, 100 P. 2d 955; **Dougherty v. Dougherty**, 187 Md. 21, 48 A. 2d 451. Further, it goes without saying that when a divorced woman remarries, she must then register according to the name of her husband.

Turning now to your second question, the rule is that a marriage is ended by the death of one of the parties. 35 Am. Jur., Marriage, {334} § 7. Therefore, it follows that since a widow is the surviving wife of a deceased husband, she is no longer married, since the marriage lasts only through the joint lives of the husband and wife. **People v. Service Recognition Board**, 403 Ill. 442, 86 N.E., 2d 357, 361; **In re Crook's Estate**, 140 Misc. 721, 252 N.Y.S. 373. However, if the widow remarries, she is generally considered to no longer be a widow, unless a particular fact situation or statutory language requires a contrary result. **People v. Service Recognition Board**, supra; **McDaniel v. Sloan**, 157 Tenn. 686, 11 S.W. 2d 894. There is nothing in § 3-2-10 which indicates that a widow is to be considered as a married woman. Likewise, it appears that a widow who remarries must be considered as a married woman and, accordingly, must register according to her husband's name and not by her given name.

We are aware of our Opinions Nos. 6399 and 57-309, which held that a married woman who filed a declaration of candidacy under § 3-11-43 need not use the name by which she is registered, but could use her own given name. However, as the learned writer of Opinion No. 57-309 pointed out, § 3-11-43 does not have the same requirements as § 3-2-10. See also Opinion No. 58-61 in which the writer concluded that a married woman who was registered under her maiden name had to file her declaration of candidacy under her married surname, although she may use her given name instead of her husband's given name.

By: Philip R. Ashby

Assistant Attorney General

1959

59-217

59-216

59-215

59-214

59-213

59-212

59-211

59-210

59-209

59-208

59-207

59-206

59-205

59-204

59-203

59-202

59-201

59-200

59-199

59-198

59-197

59-196

59-195

59-194

59-193

59-192

59-191

59-190

59-189

59-188

59-187

59-186

59-185

59-184

59-183

59-182

59-181

59-180

59-179

59-178

59-177

57-278

59-176

59-175

59-174

59-173

59-172

59-171

59-170

59-169

59-168

59-167

59-166

59-165

59-164

59-163

59-162

59-161

59-160

59-159

59-158

59-157

59-156

59-155

59-154

59-153

59-152

59-151

59-150

59-149

59-148

59-147

59-146

59-145

59-144

59-143

59-142

59-141

59-140

59-139

59-138

59-137

59-136

59-135

59-134

59-133

59-132

59-131

59-130

59-129

59-128

59-127

59-126

59-125

59-124

59-123

59-122

59-121

59-120

59-119

59-118

59-117

59-116

59-115

59-114

59-113

59-112

59-111

59-110

59-109

59-108

59-107

59-106

59-105

59-104

59-103

59-102

59-101

59-100

59-99

59-98

59-97

59-96

59-95

59-94

59-93

59-92

59-91

59-90

59-89

59-88

59-87

59-86

59-85

59-84

59-83

59-82

59-81

59-80

[59-1388]

59-79

59-78

59-77

59-76

59-75

59-74

59-73

59-72

59-71

59-70

59-69

59-68

59-67

59-66

59-65

59-64

59-62

59-61

59-60

59-63

59-59

59-58

59-57

59-56

59-55

59-54

59-53

59-52

59-51

59-50

59-49

59-48

59-44

59-47

59-46

59-45

59-43

59-42

59-41

59-40

59-39

59-38

59-37

59-36

59-35

59-34

59-33

59-32

59-31

59-30

59-29

59-28

59-27

59-26

59-25

59-24

59-23

59-22

59-21

59-20

59-19

59-18

59-17

59-16

59-15

59-14

59-13

59-12

59-11

59-10

59-08

59-09

59-07

59-06

59-05

59-04

59-03

59-02

59-01