

## **Opinion No. 61-135**

December 26, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General William E. Snead, Assistant Attorney General

**TO:** Mrs. Betty Fiorina, Secretary of State, State Capitol, Santa Fe, New Mexico

### **QUESTION**

#### QUESTIONS

1. Where a person has registered twice, the first registration being subject to cancellation because the person has not voted in the last two general elections under this registration, which registration should be cancelled?
2. If the older registration is cancelled, is the newer one valid?
3. If a woman registers before marriage in her maiden name and then after marriage registers under her married name and has not voted under her maiden name for the last two general elections, which registration should be cancelled?
4. If the older registration is cancelled, is the newer one valid?

#### CONCLUSIONS

1. The older registration.
2. Yes.
3. The older registration.
4. Yes.

### **OPINION**

#### ANALYSIS

Questions 1 and 3 may be answered by the same reasoning and will therefore be answered together.

In a previous Attorney General's Opinion, 1957-1958, No. 57-281, it was stated by this office that Sec. 3-2-21, N.M.S.A., 1953 Comp. (PS), was mandatory in that cancellation of registration for failure to vote in the previous two general elections was not discretionary but an absolute duty. Under this reasoning, the registrations mentioned in

your letter under which no vote has been cast for the two previous general elections must be cancelled. It should be pointed out, however, that the older registrations are valid until actually cancelled under Sec. 3-2-37, N.M.S.A., 1953 Comp. See Attorney General's Opinion No. 1957-58, No. 58-56.

There are no grounds stated by our statutes for cancelling the newer affidavits. Section 3-2-44, N.M.S.A., 1953 Comp., makes it a criminal offense to knowingly make a false statement on the affidavit required to be signed by a person applying for registration; however, there is no provision for voiding the registration or cancelling it for the misstatement. Therefore, the newer registrations are not automatically void and there are no grounds for cancellation.