

Opinion No. 63-138

October 15, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mrs. Alberta Miller Secretary of State State Capitol Building Santa Fe, New Mexico

QUESTION

STATEMENT OF FACTS

The portion of Section 30 of Chapter 317, Laws of 1963 pertinent to this opinion states:

"Section 30. Section 3-11-30 N.M.S.A., 1953 Compilation, is enacted to read:

'3-11-30. LIMITATION ON CAMPAIGN EXPENDITURES. -- Candidates for nomination at any primary election shall be limited in amount of expenditures for the said primary election to the following amounts respectively, exclusive of any sums of money expended for necessary personal, traveling or subsistence expenses: . . . for any office for which the electors of a county shall vote, **other than state representatives**, not exceeding two hundred and fifty dollars (\$ 250)." (Emphasis supplied).

The prior limitations on expenditures were contained in Chapter 218 of the Laws of 1955. Chapter 218 limited the expenditures for candidates for nomination for state representative. All of Chapter 218 as amended was repealed by Section 36 of Chapter 317 of the Laws of 1963.

QUESTION

What, if any, will be the limitation for campaign expenditures for candidates for nomination for state representative?

CONCLUSION

No limitation.

OPINION

{*307} ANALYSIS

The new section on limitation of campaign expenditures omits any reference to a limitation for the office of state representative. In addition it specifically says that the limitations on candidates for an office for which the electors of a county shall vote do not apply to candidates for state representative. Section 36 of the New Act also expressly

repeals all of Chapter 218 of the Laws of 1955 as amended, and it was in Chapter 218 that the previous limitations were found.

As a general rule a valid enactment containing express provisions repealing a portion of an act, is effectual to establish such repeal. See **State ex rel., Moran v. Washburn**, 19 Conn. Supp. 316, 112 A. 2d 897. In the factual situation presented in your letter, however, the case law is even more emphatic. Even without express repeal, if the legislature enacts a law in substantially the same form as the old statute but omits a part of the old statute, the portion omitted is repealed. **State ex rel., Klein v. Hughes**, 351 Mo. 651, 173 S.W. 2d 877. The language of the Court in *Krimmel v. Eielson*, 406 Ill. 202, 92 N.E. 2d 767, 769 seems appropriate on this point. The Court said:

"In addition, it is the general rule that where an act, or section of an act, is amended so as to read as it is repeated in the amendatory act, all such {308} portions of the old act or section as are not repeated in the new act are repealed without any express words for that purpose. . . ."

Therefore in the situation you present in your letter, since the former law is expressly repealed by the new statute and since the new statute omits reference to any limitation on expenses for candidates for nomination for state representative, the previous limitation is repealed and none now exists.

By: Wayne C. Wolf

Assistant Attorney General