

## **Opinion No. 65-169**

August 31, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

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

### **QUESTION**

#### QUESTION

Are affidavits of assistance still required when a voter needs assistance because of blindness, defective eyesight, physical disability which prevents marking the ballot or inability to read either the English or Spanish language?

#### CONCLUSION

Yes.

### **OPINION**

#### {\*283} ANALYSIS

Chapter 249, Laws 1965, amended Section 3-3-13, N.M.S.A., 1953 Compilation and it repealed Section 3-3-30, N.M.S.A., 1953 Compilation. Both of these sections dealt in part with election affidavits of assistance.

If these were the only two sections governing voting assistance and the filling out of an affidavit of assistance, we would have to conclude that the affidavit is no longer required. However, Section 3-3-20, N.M.S.A., 1953 Compilation was not amended in the 1965 legislative session and still provides as follows:

"Where any voter requires assistance because of blindness, defective eye-sight, physical disability which prevents marking the ballot, or inability to read either the English or Spanish language sufficiently well to do so, the judges shall require him to take the oath on the form headed 'affidavit for assistance' included with the election supplies. Either judge may swear the voter. The voter must sign or mark such affidavit. All blanks must be filled in by the election officials, and the affidavit, after being completed, must be deposited in the ballot box."

In addition, Section 3-6-5, N.M.S.A., 1953 Compilation was not amended and still provides that after the counting and tallying of votes, the affidavits of assistance are to be placed in the ballot box.

Section 3-3-31, N.M.S.A., 1953 Compilation is still on the statute books and provides that:

"Any person who shall swear falsely in order to secure such assistance shall be deemed guilty of perjury and be punished by imprisonment not exceeding one year. It shall be the duty of the election judges to advise each voter requiring assistance of this penalty for false swearing."

It is a fundamental rule of statutory interpretation that repeals by implication are not favored. This is a situation where legislative intent is difficult to discern. It would seem, however, that if the legislature had intended to eliminate the requirement of affidavits of assistance it would have amended or repealed the three additional statutes dealing with this matter, or, while it is not ideal drafting procedure, it would have stated that all laws or parts of laws inconsistent with Chapter 249, Laws 1965 were repealed.

We would like to call this matter to the attention of the Governor {\*284} and the legislature so that necessary amendments, if any are deemed such, may be made at the 1966 legislative session.