

Opinion No. 69-65

June 18, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Mr. William J. Perry, Assistant District Attorney, Third Judicial District, County Court House, Las Cruces, New Mexico 88001

QUESTIONS

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1. Is a person disqualified from voting merely because he has been committed to an institution pursuant to Section 34-2-1, et seq. N.M.S.A., 1953 Compilation?
2. Is a person disqualified from voting merely because he has been committed to the Los Lunas Hospital pursuant to Section 34-3-6, N.M.S.A., 1953 Compilation?
3. Is a person disqualified from voting merely because he has been adjudicated incompetent and a guardian appointed pursuant to Sections 32-3-1, et seq., N.M.S.A., 1953 Compilation?

CONCLUSION

See analysis.

OPINION

{*98} ANALYSIS

The Legislature enacted Chapter 240 of the Laws of 1969, and a portion of this statute deals with the qualifications of voters. Newly enacted Section 3-4-21, N.M.S.A., 1953 Compilation, requires the Board of Registration to cancel affidavits of registration of certain voters. This section provides:

"Beginning on the third Monday of March of each oddnumbered year the board of registration shall cancel, or if applicable, suspend and cancel, affidavits of registration for those grounds provided by law."

Newly enacted Section 3-4-22, N.M.S.A., 1953 Compilation sets forth the grounds for cancellation of affidavits of registration. It provides:

"The grounds for cancellation of affidavits of registration by the board of registration shall be:

- A. death of the voter;
- B. legal insanity of the voter;
- C. a felony conviction of the voter; or
- D. certain failure of the voter to vote."

For the purpose of determining when an affidavit of registration should be cancelled because of insanity the Legislature also enacted Section 3-4-24, N.M.S.A., 1953 Compilation which states:

"A. For purposes of cancellation of affidavits of registration, the legal insanity of a voter shall be ascertained by comparison of registration records with the certification of legal insanity filed by the court with the county clerk.

B. When in proceedings held pursuant to law, the district court determines that a mentally ill individual is insane as that term is used in the constitution of New Mexico, it shall file a certification of such fact with the county clerk of the county wherein the individual is registered.

C. The certification of legal insanity shall include the:

- (1) name;
- (2) age;
- (3) sex;
- (4) martial status;
- (5) birth place;
- (6) birth date;
- (7) social security number, if any; and
- (8) address."

The voting rights of a person under the categories mentioned in your questions, who is considered mentally ill pursuant to law, are provided for in Chapter 240 of the Laws of 1969, supra. This determination must be made or have been made by a District Court based upon applicable statutory requirements which include medical statements. The District Court certifications are required to be filed with the county clerk and should be referred to for a determination of the legal status of an individual's competency to vote.

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