

## Opinion No. 73-05

January 18, 1973

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Martin E. Vigil, Chief New Mexico State Police P. O. Box 1628 Santa Fe, New Mexico 87501

### QUESTIONS

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Section 39-2-6(B), N.M.S.A., 1953 Comp. provides:

"Members of the New Mexico state police, including the chief, shall not be over sixty-one [61] years of age."

Does this mean that a member shall not have passed his 61st birthday, or that a member shall not have reached his 62nd birthday?

#### CONCLUSION

That a member shall not have reached his 62nd birthday.

### OPINION

#### {\*10} ANALYSIS

This question has not been extensively litigated in other states, but the conclusion generally reached in the reported cases is that set out above. In **Wilson v. Mid-Continent Life Insurance Co. of Oklahoma City**, 159 Okla. 191, 14 P.2d 945, the court held that the phrase "over the age of sixty-five years" was not applicable to a person who had not reached his sixty-sixth birthday since fractions of a year should not be counted. Accord: **Cook v. National Fidelity & Casualty Co.**, 100 Neb. 641, 160 N.W. 957.

Again, in **Watson v. Loyal Union Life Ass'n**, 143 Okla. 4, 286 P. 888, the court said: "A person is not over 55 years of age . . . until he arrives at the age of 56." The court went on to say, "It may safely be said that it is universally so understood."

{\*11} In an Arkansas case the question was the age limits within which firemen and policemen might enter the service of the respective departments. The court concluded that a person is not "over 31 years of age" until he reaches his 32nd birthday. Likewise, it held that a person is not "over the age of 45 years" until he reaches his 46th birthday. **Allen v. Baird**, 208 Ark. 975, 188 S.W.2d 505.

In view of the language used by our Legislature in Section 39-2-6B, **supra**, it is our opinion, based on the cited cases, that our courts would reach the same conclusion that these courts did.

By: Oliver E. Payne

Deputy Attorney General