

Opinion No. 47-5026

May 21, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. D. A. Paddock, Assistant District Attorney 8th Judicial District, Clayton, New Mexico

{*49} We wish to acknowledge receipt of your inquiry of the 15th of May, 1947, wherein you raised two questions, to-wit:

1. Where one of the appointed appraisers for an estate also acts as the administrator of the estate, does such action constitute a misdemeanor?
2. Does such action in any manner vitiate the proceedings?

Section 33-305 of the 1945 Supplement to the 1941 Compilation provides, in part, as follows:

"If any appraiser is interested in any manner in any estate to be appraised or is unable for any reason to act he shall immediately notify the commissioner of revenue, who shall appoint a substitute appraiser, and the substitute appointment shall be filed in the particular estate involved."

No penalty is provided in this section, nor in the entire article on Inventory and Appraisal of Estates.

I am therefore of the opinion that violation of said section is not a misdemeanor.

I am of the further opinion that such action does not vitiate the proceedings, although irregular.

The aforementioned section provides appraisements made by the duly appointed appraisers shall be final unless appeal therefrom is taken by the Bureau of Revenue or some interested party in due time.

If steps are taken by an interested party in time, no doubt an appraiser could be removed when acting in such dual capacity.

Trusting the aforementioned satisfies your inquiry, I am

By ROBT. V. WOLLARD,

Asst. Atty. General