

## Opinion No. 49-5245

August 26, 1949

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. Paul Tackett District Attorney Second Judicial District Albuquerque, New Mexico

{\*86} I have your letter of June 9, 1949, requesting the opinion of this office as to when the salary increases for deputy county officials, authorized by Chapter 90 of the Laws of 1949, are to become effective.

This act became effective June 10, 1949, and increases the salaries of deputy county officials as of the beginning of the 38th Fiscal Year, July 1, 1949. Levies for this purpose have been made and these increases are included in the budgets for the fiscal year as approved by the State Tax Commission. The only possible bar to the present effectiveness of these increases is Section 27 of Article 4 of the Constitution of New Mexico which provides as follows:

"No law shall be enacted giving any extra compensation to any public officer, agent, servant or contractor after services are rendered or contract made; **nor shall the compensation of any officer be increased or diminished during his term of office, except** as otherwise provided in this Constitution."

This provision was construed by the Supreme Court of this state in State ex rel Gilbert et al v. Board of County Commissioners of Sierra County, 29 N.M. 209. There the court stated:

"It has been many times held that such a provision does not apply to an office held during the pleasure of any subject to removal of the appointing power, such as employees, attaches, deputies, court stenographers, and others similarly situated. This is due to the fact that such persons have no "term of office" within the intendment of such constitutional provision."

Deputy county officials have no definite term of office and are removable at the pleasure of the county official who appoints them, and are, therefore, not within the prohibition of the above quoted section of the Constitution of this state. The effective date of such salary increases, therefore, was July 1, 1949.