

## Opinion No. 51-5364

May 3, 1951

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

**TO:** Mr. Robert D. Castner State Auditor Santa Fe, New Mexico

{\*43} In reply to your letter of May 1, 1951, in which you request two opinions regarding Senate Bill No. 207 which passed the Twentieth Legislature together with the emergency clause.

This office has rendered two opinions. No. 3687 dated January 11, 1941 and No. 5263 dated May 2, 1951, in which we held that members of the Legislature can serve as members of commissions created by the Legislature and that they are entitled to per diem and expenses provided for in any act creating said commission.

Our Supreme Court, in the case of State ex rel Peck v. Velarde, 39 N.M. 179, 43 P (2d) 377, held that to require of officers the performance of duties requiring the expenditure of expense money in such performance out of the officer's own pocket, without reimbursement, would probably run afoul of the constitutional provision against enacting a law diminishing the compensation of officers during their term of office.

The same principle would follow if the office held is not similar to the office referred to in the constitutional provision of Art. IV, § 27. A question may be raised that the appointment of a legislator to the "Little Hoover Commission" is violative of Art. IV, § 28 of the State Constitution. However, in view of State ex rel Gibson v. Fernandez, 40 N.M. 288, 58 P (2d) 1197, it is my opinion that such an appointment of a legislator to the "Little Hoover Commission" would not be within the purview of Art. IV, § 28.

In summarizing the constitutional provisions and the Supreme Court cases cited, it is my opinion that legislators can serve on the commission created by Senate Bill No. 207 as passed by the Twentieth Legislature. It is my further opinion that these members are entitled to receive per diem and expenses as provided by this act at the existing rates.