

Opinion No. 51-5363

May 2, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Edwin L. Mechem Governor, State of New Mexico Santa Fe, New Mexico

{*42} I have received your request for an opinion as to whether members of the Legislature on the "Little Hoover Commission" are entitled to reimbursement for per diem and expenses incurred for attending meetings of the commission.

The pertinent State of New Mexico constitutional provisions are:

"Art. 4, § 10. Each member of the legislature shall receive as compensation for his services the sum of five dollars for each day's attendance during each session and ten cents for each mile traveled in going to and returning from the seat of government by the usual traveled route, once each session, and he shall receive no other compensation, perquisite or allowance."

"Art. 4, § 28. No member of the legislature shall, during the term for which he was elected, be appointed to any civil office in the state, nor shall he within one year thereafter be appointed to any civil office created, or the emoluments of which were increased during such term; nor shall any member of the legislature during the term for which he was elected nor within one year thereafter, be interested directly or indirectly in any contract with the state or any municipality thereof, which was authorized by any law passed during such term."

Both of these constitutional provisions must be considered to answer the above query.

In Attorney General's Opinions, 1941-42, at page 25, it was held that Art. IV, § 10, does not prohibit the legislature from paying the expenses of committee members attending committee meetings during the recess between the two sessions of the legislature provided for by Art. IV, § 5.

{*43} In State ex rel Peck v. Velarde, 39 N.M. 179, 43 P. (2d) 377, the court 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 provisions 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, Section 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 the legislators can serve on the Little Hoover Commission and receive the per diem and expenses provided for by the act.