

Opinion No. 52-5612

December 1, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Jason W. Kellahin State Corporation Commissioner Santa Fe, New Mexico

{*325} You have requested an opinion from this office as to the date of termination of your duties as a member of the State Corporation Commission. It appears that you were appointed to the office by Governor Mechem on December 14, 1951, to fill a vacancy upon the Commission and that in the recent general election, Mr. Block was elected to fill the office for the balance of the original term.

Your attention is directed to Sec. 5, Art. 5 of the New Mexico Constitution, the pertinent part of which reads as follows:

"Should a vacancy occur in any state office, except lieutenant governor and member of the legislature, the governor shall fill such office by appointment, and such appointee shall hold office until the next general election, when his successor shall be chosen for the unexpired term."

Your attention is further directed to Sec. 2, Art. 20 of the New Mexico Constitution, which reads as follows:

"Every officer, unless removed, shall hold his office until his successor has duly qualified."

{*326} Both of these sections must be read in conjunction with Sec. 3 of Art. 20 of the Constitution:

"The term of office of every state, county or district officer, except those elected at the first election held under this constitution, and those elected to fill vacancies, shall commence on the first day of January next after his election."

It is my opinion that under the provisions of Sec. 5 of Art. 5, an appointee to a state office holds his office only until the next general election. At this point a vacancy occurs in the office but under Sec. 2 of Art. 20 the appointee continues to hold his office until his successor has duly qualified. Qualification entails the receipt of a certificate declaring such successor to be elected to the office, taking the required oath, and the posting of a bond when required. If a successor has been elected and qualifies, Sec. 3 of Art. 20 comes into play and the term of office for such elected successor commences upon the date he qualifies, since he has been elected to an office to fill a vacancy.

Sec. 54-101 NMSA requires the members of the State Corporation Commission to execute and file a bond, to be approved by the Auditor, for the faithful performance of their duties.

It is therefore my opinion that since Mr. Block has received his certificate declaring him elected to the short term of State Corporation Commissioner, he is entitled to assume his duties as such commissioner upon taking the oath and complying with the bond requirements and that your duties as such commissioner terminate with his qualifying for the office in this manner.

I note in your letter that the purpose of your inquiry is not to dispute his title to the office but is merely made for the purpose of being informed as to what date your successor takes over the office to relieve you of further obligation under your bond. With reference to that, may I state that the foregoing has indicated that Mr. Block is entitled to take over the office, upon qualifying in the matter hereinbefore indicated, and that from the date of so qualifying, your obligations under the bond you have posted cease.

I trust this fully answers your inquiry.