

## Opinion No. 53-5721

March 31, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mrs. Beatrice B. Roach Secretary of State Santa Fe, New Mexico

{\*116} On February 23, 1953, you addressed an inquiry to this office relative to the appointment of a Capitol Custodian.

Section 6-205 N.M.E.A., 1941 Compilation, reads as follows:

"Section 134-1201 of New Mexico Statutes Annotated, Compilation of 1939, be and the same hereby is repealed, and all the powers and duties heretofore exercised by said committee are hereby vested in the governor of the State of New Mexico and the secretary of state to serve at their pleasure, with the powers and duties hereinafter specifically set forth."

It is apparent that the Legislature intended that three persons comprise the Capitol Custodian Committee. The Governor of New Mexico, the Secretary of State, both ex-officio and the Capitol Custodian appointed by the two ex-officio officers. The Governor and the Secretary of State are members ex-officio and their concurrence is necessary to fill the position of Capitol Custodian, who becomes, upon appointment a full fledged member of said commission. In the absence of such concurrence the Governor and Secretary of State constitute the Capitol Custodian Committee. Neither the Governor nor the Secretary of State have any more power in the appointment of a capitol custodian than the other and without the concurrence of the two in the appointment of the position that position cannot be filled.

In Cause No. 24,387 in the District Court of Santa Fe County, Judge David W. Carmody presiding, {\*117} entitled Edwin L. Mechem, as Governor of the State of New Mexico, plaintiff, vs. Beatrice Roach, as Secretary of the State of New Mexico, Robert Cartner, as Auditor of the State of New Mexico, and Biterbo Quintans, Defendants, the Court made Findings of Fact and Conclusions of Law. In the Findings filed in that cause the Court states specifically that concurrence must be had between the Governor and the Secretary of State to make the appointment of a capitol custodian effective.

Therefore it is the opinion of this office that both the Governor and Secretary of State must concur in the appointment of a capitol custodian, and in the absence of such concurrence the position cannot be filled. Any moneys paid out to a capitol custodian in the absence of such concurrence would be unauthorized and the Auditor would be liable if the two ex-officio members do not concur in the appointment.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General