

Opinion No. 55-6300

October 17, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Jack Love, Assistant District Attorney, Fifth Judicial District, Roswell, New Mexico

We have your letter of September 10th requesting an opinion from this office as to whether the offices of deputy sheriff and constable are incompatible and also whether the offices of jailer and constable are incompatible. You ask the further question whether if the jailer was a deputy sheriff (regular or special) this would therefore be a different result.

We think the former opinion from this office No. 4781 1945-1946, takes care of the question of the incompatibility of the offices of deputy sheriff and constable. We are enclosing a copy of this opinion.

New Mexico Statutes Annotated, Section 15-43-13, merely provides for the appointment of jailers and the salaries for such office. There are no duties prescribed. Commonly understood the duties of such office would be limited to the care and safe keeping of the inmates of the county jail. For this work a set salary is prescribed. These duties would not conflict with the duties of a constable. There would be no conflict in fees as in the case with deputy sheriff and constables, as was pointed out in Opinion No. 4781. We are therefore of the opinion that the office of jailer and constable is not incompatible.

If the jailer is also a deputy sheriff, either regular or special, we feel that the above numbered opinion would be controlling and in such case the jailer having a deputy commission could not be also a constable.

Trusting we have answered your questions, we remain

By: Paul L. Billhymer

Assistant Attorney General