

Opinion No. 55-6344

December 21, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Patrick F. Hanagan, District Attorney, Fifth Judicial District, Roswell, New Mexico

In your letter of December 21, 1955, you inquire as to whether or not it is permissible to employ the same person both as assistant district attorney and as a special investigator.

§ 17-1-3, N.M.S.A., 1953 Comp., insofar as is material to your District, provides as follows:

"In the fifth judicial district, three thousand dollars (\$ 3000.00) salary per annum with sixteen thousand two hundred dollars (\$ 16,200.00) for two (2) or more assistants and other personnel; and four thousand eight hundred dollars (\$ 4,800.00) to provide for one (1) or more special investigators trained in police work, Provided one (1) of the assistant district attorneys shall reside and maintain his office in Lea County."

This office has previously ruled, in Opinion No. 5709, that one person may hold two positions with the State so long as the two are not incompatible. Clearly, the duties of these two offices are compatible.

The only additional question which might arise is whether or not the duties of assistant district attorney encompass duties which might be required of a special investigator.

The duties of the district attorney and of his assistants are set forth in § 17-1-11, N.M.S.A., 1953 Comp., as follows:

"It shall be the duty of the district attorney:

"1. To prosecute and defend for the state in all courts of record of the counties of his district, all cases, criminal and civil, in which the state or any county in his district may be a party, or may be interested or concerned;

"2. To represent the county before the board of county commissioners of any county in his district in all matters coming before such board, whenever he is requested to do so by the board of county commissioners, and he may appear before such board when sitting as a board of equalization without such request;

"3. To advise all county and state officers whenever such advice is requested;

"4. To represent any county in his district in all civil cases in which such county may be concerned in the Supreme Court, this provision, however, not to apply to suits brought in the name of the state."

It is our opinion that none of the above-mentioned statutory duties include the obligation to perform investigative services in the nature of police work and we, therefore, conclude that it would be proper for you to employ the same person as both assistant district attorney and as a special investigator, if he performs the duties of both of these positions.

By Walter R. Kegel

Assistant Attorney General