

## **Opinion No. 58-221**

November 6, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,  
Assistant Attorney General

**TO:** Mr. David F. Cargo, Assistant District Attorney, Second Judicial District,  
Albuquerque, New Mexico

### **QUESTION**

#### QUESTIONS

1. Is a duly elected police judge entitled to an increase in salary during his term of office?
2. Is it permissible for the police judge to also hold a job in the town administration as Traffic Violations Bureau Director, and, if so, is it permissible for him to draw compensation for said added duty?

#### CONCLUSIONS

1. No, if the police judge was elected pursuant to Sec. 37-1-1 through 37-1-9, N.M.S.A., 1953 Comp.
2. Yes.

### **OPINION**

#### ANALYSIS

In answer to question No. 1, we refer you to A.G. Opn. No. 5683 which we believe to be determinative on the issues raised in question No. 1. In that opinion, this office held that if the police magistrate held office by virtue of Sec. 14-10-19 in which a justice of peace acts as police magistrate at the will of the city commission, that his salary could be increased since there is no fixed term of office. Where the police judge serves for a fixed term pursuant to Sec. 37-1-1 through 37-1-9, supra, an increase in pay is precluded by Art. IV, Sec. 27 of the New Mexico Constitution. As we stated in Opinion No. 5683 referred to above:

"Police judges elected under the provision of this law would fall within the contemplation of the constitutional provision above mentioned and their salaries could not be increased during their terms of office".

Our statutes regarding the appointment and election of police magistrates are unchanged since the issuance of Opinion No. 5683. This office, therefore, believes that the said opinion is controlling and legally correct and we, therefore, decline to overrule Opinion No. 5683.

In answer to question No. 2, it is our opinion that it would be permissible for the police judge to also hold a job in the town administration as Traffic Violations Bureau Director and draw a salary for said additional duty if no incompatibility exists between the said offices and if the additional duties do not render less efficient, services performed as police judge.

You are referred to **Haymaker v. State ex rel. McCain**, 22 N.M. 400, wherein incompatibility was defined. There it was held:

"In legal contemplation, incompatibility between two offices is an inconsistency between the functions of the two. The offices must subordinate, one to the other, and they must, per se, have the right to interfere with the other before they are incompatible." (Citing *People v. Green*, 58 N.Y. 295; *Stubbs v. Lee*, 64 Me. 195, 18 Am. Rep. 251; *State v. Brown*, 5 R.I. 1).

In view of the foregoing, it is necessary for us to determine whether incompatibility exists between the police judge's job as police judge and his contemplated job as Traffic Violations Bureau Director in the Town of Grants. Sec. 37-1-2, N.M.S.A., 1953 Comp., states as follows.

"Such police court shall have jurisdiction over all offenses and complaints arising under the ordinances and laws of such cities and towns to the same extent and with like effect as now exercised in such cities and towns by justices of the peace, acting as police judges."

The foregoing section thus vests jurisdiction in the police court over all offenses and complaints arising under the ordinances and laws of the city or town in which he is the police judge. We are informed that the Traffic Violations Bureau Director in the Town of Grants will take on the duties of handling all payments of traffic violations including parking tickets and those matters which normally are paid without appearing in court.

Further, the Traffic Violations Bureau Director will handle all citations for failure to appear before the court; keep records pertaining to all matters which are cited by the town police.

This Bureau will be a separate and distinct bureau from the police judge, but will work in close liaison with him and with the Grants Police Department, its main purpose being for the records pertaining to misdemeanor traffic violations and the collection of fines imposed for such violations. In view of the foregoing, we will have the police judge exercising jurisdiction over ordinances and laws in the city in which he is employed and the same police judge will handle payment of traffic violations, citations for failure to

appear before the court and keep all records pertaining to matters which are cited by the town police. The two offices will be separate and neither office will take precedence over the other.

In view of the foregoing, we see no incompatibility as defined in **Haymaker v. State**, supra, and believe that the police judge could hold both offices and draw compensation therefor. The additional duties as Traffic Violations Bureau Director, as a practical matter, should not interfere with the police magistrate position. In other words, we feel that if the police judge has the time and ability to properly administer the duties of both offices, there is no reason why he should not do so.