

Opinion No. 58-38

February 20, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
Assistant Attorney General

TO: Mr. Glenn B. Neumeyer, Assistant District Attorney, Second Floor Court House,
Las Cruces, New Mexico

QUESTION

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Would it be permissible for regularly employed city policeman to act as a special deputy sheriff solely for the purpose of serving civil papers for Justices of the Peace? (The officer would not be in uniform and would use his own automobile.)

CONCLUSION

See Opinion.

OPINION

ANALYSIS

Section 15-40-12, in part, reads:

". . . any sheriff is hereby authorized at any time to appoint respectable and orderly persons as special deputies to serve any particular order, writ or process, . . . and it shall not be necessary to give or file any notice of such special appointment . . ."

While on its face this is not too clear a mandate to make an appointment to serve more than a "particular" writ or process, this language constitutes an amendment of previous legislation in which the following appears:

"and the person so appointed shall only be authorized to serve the process, writ or order which he shall be specially appointed to serve."

By deletion of this last quoted portion we think the legislative intent was to eliminate this modification of authority and to broaden the sheriff's authority to appoint process serving deputies. Combined with the fact that the statute specifically makes unnecessary any giving or filing of notice of such special appointment, this office sees no legal prohibition against such an appointment as is the subject of your inquiry.

Assuming the validity of the proposed appointment, we now come to two other aspects of the situation: (1) Compatibility of employment, (2) Double compensation. As to compatibility of employment, I am enclosing a copy of a previous Attorney General's Opinion, being 57-23 which exhaustively disposes of the problem and holds similar double employment as not being incompatible. Without further consideration of this, on the basis of the authorities and reasons contained in that opinion, we are of the belief that your inquiry poses no objection on the grounds of incompatibility.

The third point to be considered deals with compensation for both duties and in this regard we again refer you to Attorney General's Opinion, 57-23 for exposition in detail on a similar, although not identical situation.

Among his other duties a city policeman is required to serve writ, process or order involving breach, violation or concern with municipal ordinances, all as directed by a municipal court, if one there be, or a justice of the peace court. The compensation as city policeman covers this duty. With regard to process of this nature, without the necessity of belaboring an obvious point, the "special deputy sheriff" may not receive pay in one capacity for the doing of a task required of him in another for which payment is made and accepted.

Hence, we are of the opinion that as regards such process as a city policeman is authorized to serve, your "special deputy sheriff" may not be paid for such serving both as city policeman and "special deputy sheriff".