

## **Opinion No. 58-32**

February 26, 1958

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

**TO:** Mr. Norman Hodges, District Attorney, Sixth Judicial District, Silver City, New  
Mexico, Attention: Mr. Edison C. Serna, Assistant District Attorney

### **QUESTION**

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1. May an instructor in cabinet making and building techniques, whose salary is paid by the State Department of Vocational Education, whose instructional hours are from 5:30 P.M. to 11:00 P.M. and who is a qualified elector in conformity with Section 3-11-43, New Mexico Statutes Annotated, 1953 Compilation, become a candidate for nomination in the Primary Election for Justice of the Peace in his precinct without resigning as such instructor?

2. May an Assistant District Attorney whose salary is paid by the State of New Mexico for his services as such Assistant District Attorney and who is a qualified elector in conformity with Section 3-11-43, New Mexico Statutes Annotated, 1953 Compilation, possessing the qualifications for the office of District Judge, become a candidate for nomination in the Primary Election for the office of District Judge in the district wherein he resides, without first resigning as Assistant District Attorney?

#### **CONCLUSIONS**

1. Yes.
2. Yes.

### **OPINION**

#### **ANALYSIS**

Nothing appears in the qualifications for the offices of Justice of the Peace or of District Judge that would prohibit a Vocational Instructor in the first instance, or an Assistant District Attorney in the second instance, from becoming candidates for the respective offices.

In the matter of the Vocational Instructor running for election as Justice of the Peace where the teaching hours are from 5:30 P.M. to 11:00 P.M., clearly outside the usual Justice of the Peace working hours, no substantial incompatibility is in evidence. We

wish to emphasize that our conclusion is based on the working hours given in the question and that if these hours of instructional employment are changed so as to present a conflict with the usual working hours of a Justice of the Peace, that incompatibility on grounds of public policy would ensue. There is obvious inconsistency in a Justice of the Peace holding public employment as a Vocational Instructor during the ordinary working hours of a Justice of the Peace Court.

Inasmuch as the duties enumerated for Assistant District Attorney are not necessarily interfered with by running for the office of District Judge, we see no prohibition against it. You will understand that this opinion concerns only the legality of such a procedure and does not in any way consider the propriety of the same.

The previous opinion, which this supplement replaces, dealt with § 118 i (a), Title 5 of the Federal Code, better known as the Hatch Act. The scope of your first question inquiry is covered by an exception thereto, namely, § 118 K-1 of Title 5, which, by inadvertence, was overlooked.

Hence, these conclusions, reached anew, constitute a partial error correction.