

**Opinion No. 59-138**

September 14, 1959

**BY:** HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Dante Vaio State Purchasing Agent P.O. Box 749 Santa Fe, New Mexico

{\*211} This is written in reply to your recent request for an opinion on the following question:

Whether a member of the legislature which created the Oil and Gas Accounting Commission can write a surety bond for that commission?

In answer to your question, it is my opinion that:

No, a member of the legislature cannot write a surety bond for that Commission if he was a member of the legislature which created the Commission.

The article in the New Mexico Constitution which controls the answer to your question is Article IV, Section 28, which reads in part as follows:

". . .; nor shall any member of the legislature during the term for which he was elected nor within one year thereafter, be interested directly or indirectly in any contract with the state or any municipality thereof, which was authorized by any law passed during such term."

The authorization for the bond is found in Section 6, Chapter 50, Laws 1959, which is now codified as Section 65-8-6, N.M.S.A., 1953 Comp., (PS), and reads as follows:

". . . The commission shall have all employees who receive or handle public funds bonded by blanket coverage to the state for an amount not less than Two Hundred Fifty Thousand Dollars (\$ 250,000) . . ."

You state as a fact in your request that this bond is written by a member of the last legislature which passed the statute above quoted which is part of the act which created the Oil and Gas Accounting Commission. This being true, it is clear that this bond, which is in substance a mere surety contract, is in violation of the above quoted constitutional section and therefore void.

This set of facts is not similar to the facts presented in the case of **State v. Highway Commission**, 38 N.M. 482, 35 P. 2d 308. In that case, the statute passed by the legislature of which the seller-legislator was a member was held to be a mere collation of older statutes and not a new enactment. That case does not control the question herein presented since it is distinguishable on its facts.

This question involves a set of facts which fits the prohibition of the constitutional provision exactly. It is the clear import of the constitutional provision to prohibit just such a contract as this. The prohibition is clearly set forth; the facts of this case meet the prohibition with equal clarity -- the surety contract is, therefore, void.

Boston E. Witt

Assistant Attorney General