

Opinion No. 59-140

September 14, 1959

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

TO: Honorable Louis S. Page State Representative Guadalupe County Santa Rosa, New Mexico

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

Whether members of the legislature may serve on the following boards and commissions:

1. Cattle Sanitary Board
2. Sheep Sanitary Board
3. State Police Board
4. Capitol Buildings Improvement Commission
5. Board of Regents -- El Rito Normal
6. New Mexico Boys' School
7. State Fair Commission
8. Miners' Hospital of New Mexico

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

No, legislators may not serve on the above listed boards, but see analysis.

This opinion will be restricted to the specific boards and commissions about which you inquire except the Northern New Mexico Normal and is not to be construed as applying to all boards and commissions {*214} throughout the State. This opinion therefore applies to Representative W. O. Culbertson, Jr., now serving on the Cattle Sanitary Board; Senator Tibo Chavez, serving on the State Police Board; Senator Fabian Chavez, serving on the Capitol Buildings Improvement Commission; Representative Max Maez, serving on the Board of Trustees of the New Mexico Boys' School; Senator W. C. Gallagher, serving on the State Fair Board; Representative Ruben W. Evans, serving on the Sheep Sanitary Board. Opinion of the Attorney General No. 59-93 dated August 10, 1959, ruled that Representative Carl Turner could not be a member of the Board of Regents of Northern New Mexico Normal School at El Rito. As far as this office

has been able to determine, no legislator is presently serving on the board of trustees of the Miners' Hospital of New Mexico.

In keeping with Opinion of Attorney General No. 59-79 dated July 22, 1959, wherein the tests for a civil office as used in Article IV Section 28 of the New Mexico Constitution were set forth and analyzed, these tests will be applied to the boards and commissions herein under consideration; if they meet the tests, then being a member thereof must be held to be holding a civil office within the meaning of the above cited constitutional provision.

These tests were initially laid down in the case of **State ex rel Gibson v. Fernandez**, 40 N.M. 288, 58 P. 2d 1197 and are as follows:

- "1. It must be created by the constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature.
2. It must possess a delegation of a portion of the sovereign power of the government to be exercised for the benefit of the public.
3. The powers conferred and the duties to be discharged must be defined directly or indirectly or impliedly by the legislature or through legislative authority.
4. The duties must be performed independently and without control of a superior power, other than the law, unless they are those of an inferior or subordinate office created or authorized by the legislature and by it placed under the general control of a superior officer or body.
5. It must have some permanency and continuity and not be temporary or occasional. In addition in this state, an officer must take and file an official oath, hold a commission or other written authority, and give an official bond if the latter be required by proper authority."

When these tests are applied to the statutes authorizing the above boards and commissions and the duties imposed upon the members, it is my opinion that they meet these requirements and are therefore holding a civil office within the meaning of the constitutional provision. It should be noted that the statutory powers of these boards and commissions involve, in every case, the promulgating of rules and regulations for the public good or the determination of policy, both administrative and fiscal. The statutes authorizing the powers of the above boards and commissions are as follows:

Cattle Sanitary Board, § 47-2-1 et seq, NMSA 1953 Comp.,

State Police Board, § 39-2-21, NMSA 1953 Comp.,

Capitol Buildings Improvement Commission, § 6-2-4 NMSA 1953 Comp.,

New Mexico Boys' School, § 42-4-2 et seq, NMSA 1953 Comp.,

Miners' Hospital of New Mexico, § 13-3-1, NMSA 1953 Comp.,

{*215} State Fair Board, § 45-20-4, NMSA 1953 Comp.,

Sheep Sanitary Board, § 47-8-8, NMSA 1953 Comp.

Copies of the above cited opinions of the Attorney General are enclosed for your convenience.

By: BOSTON E. WITT,

Assistant Attorney General