

Opinion No. 59-163

October 9, 1959

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

TO: Mr. Oliver E. Payne Attorney for the Oil Conservation Commission P. O. Box 871
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{*253} This opinion is in response to your request on the following two questions:

1. May the Governor in appointing a "practical oil man" to serve in his place on the Oil Conservation Commission limit the term of appointment to a single meeting?

2. Would a former member of the Oil Conservation Commission be considered a "practical oil man" within the meaning of the statute authorizing the Governor to {*254} appoint such a person to serve in his place?

In our opinion, the answers to your questions are as follows:

1. No.

2. See opinion.

The statute in question herein is Section 65-3-4, N.M.S.A., 1953 Comp. This section provides in pertinent part as follows:

"* * * Provided that the governor may appoint same practical oil man, a resident of this state, to serve in the place and stead of the governor as a member of said commission. * * *, except that if the governor shall appoint a practical oil man to serve in his place and stead, the term of office of the person so appointed shall expire with the term of the governor by whom he shall have been appointed. * * *"

In our opinion, the language of the above statute clearly provides for the term of office of the Governor's appointee. In the absence of a constitutional provision, the power of the legislature to provide for the term is such a well-recognized principle of law as to not require any citation of authority. In using the phrase "the term of office of the person so appointed shall expire with the term of the governor by whom he shall have been appointed", it is our opinion that the legislature has specifically provided that the term shall run concurrently with that of the governor.

"Where the term of an office is fixed by law, and the appointing power attempts to designate a different term, the attempted extension or limitation will be disregarded as surplusage, and an appointee's acceptance of such an appointment will not estop him from claiming the entire term." 67 Am. Jur., Officers, Sec. 44c.

Therefore, it is our conclusion that the Governor in appointing a person to serve in his place on the Oil Conservation Commission may not limit the term to less than that provided by the statute, that is, to the expiration date of the term of the appointing governor.

We are unable to give a specific answer to your second question, that is, whether a former member of the Oil Conservation Commission will qualify as a "practical oil man" and thus be eligible for appointment to the Commission. There is a dearth of case law in interpreting the word "practical" in the sense that it is used in the above legislation. One such case which appears to be in point, however, is **Bell Publishing Company, et al. v. Garrett Engineering Company**, (Tex., 1943) 170 S.W. 2d 197. This decision involved the interpretation of the phrase "practical engineer". The trial court, in its charge to the jury, defined "practical" in the sense therein used to mean "trained by or derived from experience or practice; hence, skilled in the application of means in attaining particular ends -- experience" supra 203. The appellate court approved this definition by the trial court.

The definition hereinabove set forth of the word "practical" is the one generally accepted by persons of common experience as well as those more familiar with the field of semantics. It is our conclusion that the intent of the legislature was that similar meaning should be ascribed to the legislation in question.

However, as to whether the former member of the Oil Conservation Commission would qualify when the above definition is applied is a question for determination under the administrative discretion of the Governor. We are not in a position to determine the question nor do we feel it is our prerogative at this point to make such a determination even if we were familiar with all of the details. We, therefore, limit this opinion to our interpretation of what is intended in the use of the {255} phrase "practical oil man".

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Assistant Attorney General