

Opinion No. 60-130

July 5, 1960

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

TO: Mr. John A. Anderson City Attorney City of Lordsburg Box S Lordsburg, New Mexico

QUESTION

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1. May a member of the Board of Aldermen of a city serve as a volunteer policeman for the city without pay?
2. May he serve as such a policeman for the city with pay?
3. May he serve as a deputy sheriff for the county without pay?
4. May he serve as a deputy sheriff for the county with pay?

CONCLUSIONS

1 and 2: No.

3 and 4: Yes.

OPINION

{*507} ANALYSIS

Clearly, under § 14-17-4, N.M.S.A., 1953 Comp., a member of the Board of Aldermen cannot serve as a volunteer policeman, either with or without pay. This section reads as follows:

"The city council, or board of aldermen or board of trustees of any incorporated city, town or village, shall constitute the legislative branch of the city, town or village government, and shall not perform any executive functions of government. **Any person holding the office of city councilman, or village trustee, is hereby disqualified from hold any office or employment under any city, town or village government . . .**" (Emphasis supplied).

The position of volunteer policeman for the city is beyond doubt an "office or employment" of the city. The alderman cannot, therefore, serve in such a position. This is true even if he is not to be paid for his services as volunteer policeman, since the

statute makes no exception for allowance of a nonpaying city job for an alderman. See also Opinion No. 3532, dated May 23, 1940, wherein former Attorney General Sedillo ruled that the offices of mayor of a city and chief of police of such city were incompatible.

In our opinion, the prohibition of § 17-14-4 does not run to the holding of a county office by a city alderman. The first sentence of the section is merely a recital that the board of alderman shall, {*508} sitting as a body, perform only legislative, and not executive functions. The executive functions are to be performed by the mayor and other city officers and employees. See § 14-17-1. The second sentence is explicit in its prohibition of city employment only. It does not prohibit county employment.

Since, in our opinion, county employment of city aldermen is not prohibited by statute, we turn to the question of whether the positions of city alderman and deputy sheriff are prohibited because incompatible.

The test of incompatibility of offices in New Mexico was set forth in the leading case of **Haymaker v. State ex rel. McCain**, 22 N.M. 400, 163 Pac. 248 (1917), as follows:

"Incompatibility between offices is an inconsistency between the functions thereof, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both."

Our opinion is that the offices of deputy sheriff of a county and member of the board of alderman of a city are not incompatible in view of the definition of incompatibility set forth in the **Haymaker** case. Therefore, such an alderman may also hold the office of county deputy sheriff, either with or without pay. For further holdings in this regard, see Opinions Nos. 5326 and 5418.

By: Philip R. Ashby

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