

## Opinion No. 63-134

October 2, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** Mr. Robert B. Foutz New Mexico Real Estate Commission 1018 Simms Building  
Albuquerque, New Mexico

### QUESTION

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May the Governor remove a member of the Real Estate Commission and replace him with another appointee?

#### CONCLUSION

Yes.

### OPINION

#### {\*298} ANALYSIS

We had thought that this question was put to rest once and for all by the Supreme Court of New Mexico in 1927 when it decided **State ex rel. Ulrick v. Sanchez**, 32 N.M. 265, 255 Pac. 1077. However, since there is apparently still some lingering doubt regarding the holding of the Court in that case, we will again set forth this holding. Section 5, Article V of the State Constitution provides in germane part, as follows:

"The governor shall nominate, and, by and with the consent of the senate, appoint all officers whose appointment or election is not otherwise provided for, and may remove any officer appointed by him . . ."

The Real Estate Commission is created and the appointment power of the members is vested in the Governor by § 67-24-21, N.M.S.A., 1953 Compilation.

The exact question, as here presented, was raised in the **Ulrick** case, supra, wherein the governor removed two associate State Tax Commissioners and appointed others. In deciding specifically that the governor may remove any officer appointed by him, the Supreme Court, speaking through Mr. Justice Bickley, commented as follows:

"So we think that clearly the only question arising on the point under consideration is: Does the Constitution require the giving of notice or hearing and an opportunity to be heard as a condition precedent to removal? If it does not, whatever was accorded to the appellants in the way of a notice and hearing was given as a matter of grace, and not of

right, and they have no cause to complain about the inadequacy of the opportunity afforded to be heard . . . .

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"It is fair to assume that the Constitution makers thought that a person who could be trusted to fill the office of Governor could be trusted to deal fairly with office holders whom he was empowered to appoint, and that cases might arise where prompt action was necessary for the public good, and it was not wise to tie the hands of the Governor when such action might well work to the detriment of the state . . ."

So, we think it certain that it has been the law of this state since 1927 that the Governor may remove any person appointed by him, or his predecessor, and, likewise, {299} that no notice or hearing need be given before a removal can be made.

The answer to your specific question is, Yes, the Governor can remove any member of the Real Estate Commission at any time without notice or hearing.

By: Boston E. Witt

First Assistant Attorney General