

Opinion No. 64-57

May 5, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Jerry Wertheim, Assistant Attorney General

TO: H. Leslie Williams, Assistant District Attorney, Second Judicial District, Albuquerque, New Mexico

QUESTION

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May a New Mexico constable appoint a deputy constable to perform all the duties of a constable?

CONCLUSION

No.

OPINION

ANALYSIS

A search of the applicable New Mexico Statutes, Chapters 15, 36 and 39, N.M.S.A., 1953 Compilation, gives no indication that a constable is either expressly or impliedly authorized to appoint a deputy constable with all the duties of a constable. It appears that a "deputy constable" can be appointed only in emergency situations. Sections 15-40-16, 36-4-6 and 47-15-6, N.M.S.A., 1953 Compilation. Moreover, a comparison of the pertinent chapters of the statute with the one dealing with the office of sheriff whose duties are quite similar to those of the office of constable suggests that the legislative intent was to limit the position of deputy constable to those explicitly indicated in the statute. Had the legislature desired to authorize the appointment of a deputy constable, it would seemingly have set out the qualifications, duties and rights of such deputy as it did for deputy sheriff in Section 15-40-9 to 15, N.M.S.A., 1953 Compilation. The only qualifications set out in the statute for a "special constable" are in Section 39-1-9, N.M.S.A., 1953 Compilation, a chapter dealing with peace officers in general. It is important to appreciate that this Section is consistent with the sections authorizing the appointment of special constables in isolated emergency situations noted above. Even the language "special constable" used in Section 39-1-9 suggests that constables other than those elected in accordance with Chapter 36, N.M.S.A., 1953 Compilation, are to be used only in extraordinary situations.

If no authority to appoint a deputy constable arises from the statute, as it apparently does not, then one must determine whether the constable has common law authority to

appoint a deputy constable. He does not appear to have such authority. **Kaysen v. Steele**, 13 Utah 260, 44 Pac. 1042 (1896). At the most, he can delegate only his ministerial duties. **Johnson v. Fennell**, 35 Cal. 711 (1868). Therefore, in answer to your specific question, we conclude that a constable does not have authority to appoint a deputy constable to perform **all** of the duties of a constable.