

Opinion No. 65-241

December 27, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Gary O'Dowd, Assistant Attorney General

TO: Representative John B. Matson, 2132 Utah N.E., Albuquerque, New Mexico

QUESTION

QUESTIONS

1. Do the provisions of Section 72-8-4, N.M.S.A., 1953 Compilation, apply to a member of the state legislature?
2. Do the provisions of Section 72-8-4, supra, apply after the expiration of the term of office of a legislator?
3. What penalties exist if a legislator violates the provisions of Section 72-8-4, supra?
4. What is the legal effect if a public officer, who has purchased land in violation of Section 72-8-4, supra, sells or transfers the land?
5. Who has the responsibility to insure that a legislator who has violated Section 72-8-4, supra, is removed from office?
6. May a public officer who has violated the provisions of Section 72-8-4, supra, be prevented from being employed by the state, county or municipality, or from being elected to public office?

CONCLUSIONS

1. Yes.
2. No.
3. See Analysis.
4. See Analysis.
5. See Analysis.
6. See Analysis.

OPINION

{*394} ANALYSIS

Section 72-8-4, N.M.S.A., 1953 Compilation, provides as follows:

"No state official, deputy thereof, or person employed in any capacity by the state, or any county, or municipality, shall be interested or concerned, directly or indirectly in the purchase of any lands, lots or other property sold by the state tax commission under the provisions of law relating to sale of delinquent tax property. Any violation of the provisions of this section shall be punishable by removal from office of such officer, deputy or employee."

Your first question was answered by this office in Attorney General Opinion No. 61-25 issued March 22, 1961. In that opinion this office held that state legislators are "state officials" within the meaning of that term in Section 72-8-4, supra, and therefore they cannot be interested or concerned, directly or indirectly, in a contract to purchase lands or property held by the State of New Mexico under a tax deed. It is still our opinion that this is the law in New Mexico.

Section 72-8-4, supra, was intended to prohibit only a certain class of persons from purchasing tax deeds or tax certificates because it was felt that these individuals might profit unduly or unfairly because of their office. **Brown v. Bowling**, 56 N.M. 96,100, 240 P.2d 846 (1952). Nothing in Section 72-8-4, supra, indicates any intention to penalize those who have once held public office by prohibiting them from contracting to purchase tax deeds or certificates from the State Tax Commission after the expiration of their term of office or employment. Thus we conclude that the prohibitions of Section 72-8-4, supra, apply only so long as an individual actually holds public office.

The penalty for violation of Section 72-8-4, supra, is found in the statute itself, i.e., removal from office. We find no other penalty under the laws or the Constitution of this state. If the violation is not detected while the individual is in office, there is no penalty other than those discussed in the next paragraph.

Your fourth question deals with the legal effect of a contract entered into in violation of Section 72-8-4, supra. Section 76-707, N.M.S.A., 1941 Compilation, was the almost identical forerunner of Section 72-8-4, supra. The supreme Court of New Mexico had occasion to set forth the effect of a violation of Section 76-707, supra, in **Eager v. Belmore**, 53 N.M. 299, 207 P. 2d 519 (1949). In that case the State Tax Commission conveyed three lots to W. F. Nance, a transportation clerk employed by the New Mexico State Corporation Commission. Nance subsequently conveyed the land to the Eager family who brought a quiet title action against the former owners. The Supreme Court held that Section 76-707, supra, prohibited the transportation clerk from purchasing the property from the State Tax Commission and therefore the deed to Nance was void and conveyed no title or interest therein. Since the deed to Nance was void, the Supreme Court found that he could not convey title or interest to the Eagers. The Supreme Court reversed the decision of the trial court which had found for the Eagers, and ordered that the Eagers bill to quiet title be dismissed with prejudice.

It is concluded that if a legislator purchased lands in violation of Section 72-8-4, supra, while he {*395} was in office, he has no rights, title or interest in the land; and similarly anyone he sells or transfers the land to has no rights, title or interest in the land.

Your fifth question asks who has the responsibility to insure that a legislator who has violated Section 72-8-4, supra, is removed from office. Section 7 of Article IV of the New Mexico Constitution provides that each house of the legislature has the authority to judge the qualifications of its members. If a member of the legislature has violated Section 72-8-4, supra, he may be impeached by the legislature, but see Attorney General Opinion No. 3909, dated August 16, 1926.

Your last question relates to the right of one who has violated the provisions of Section 72-8-2, supra, to hold public office in the future. Section 2 of Article 7 of the Constitution of New Mexico sets forth the qualifications to hold public office in this state. No other qualification may be imposed by the legislature. **Gibbany v. Ford**, 29 N.M. 621, 628, 225 Pac. 577 (1924). Where there is no constitutional declaration of ineligibility after removal from public office, the courts may not impose the disability. 42 Am. Jur. § 57, page 925. However, one that has been removed from public office may not hold public office during the unexpired term of his office.

We therefore conclude that a removal from public office merely disqualifies the one removed from holding any other public office during the unexpired term of his office. Once his term of office has expired he may be appointed or elected to hold any public office that he is qualified to hold under the New Mexico Constitution.