

Opinion No. 67-36

March 6, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Harrell Budd Legislative Liaison Aide Office of the Governor Legislative-Executive Building Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Can a legislator serve as a delegate to a constitutional convention?
2. Can a legislator receive payment in any form while serving as a delegate to a constitutional convention?
3. Can legislators designate themselves as delegates to a constitutional convention?

CONCLUSIONS

1. Yes.
2. He can receive per diem if the Act actually calling the convention provides for per diem for delegates.
3. Not at this session anyway.

OPINION

{*46} ANALYSIS

We will answer your first two questions together. Legislators, if properly selected at the proper time, can serve as delegates to a constitutional convention. They can receive per diem for such service if the Act calling the convention provides for per diem for delegates.

In Opinion No. 5364 (1951) it was stated as follows:

"This office has rendered {*47} two opinions, No. 3687 dated January 11, 1941 and No. 5263 dated May 2, 1951, in which we held that members of the Legislature can serve as members of commissions created by the Legislature and that they are entitled to per diem and expenses provided for in any act creating said commission."

The above statement about serving on any commission created by the legislature is too broad. Legislators cannot serve on **executive** boards or commissions. Opinion No. 59-79.

Involved in the 1951 Opinion, a portion of which is quoted above, was the appointment of a legislator to the "Little Hoover Commission." The opinion, relying on the Supreme Court decision in **State ex rel. Gibson v. Fernandez**, 40 N.M. 288, 58 P.2d 1197 held that a position on this Commission was not a civil office within the interdiction of Article 4, Section 28. This would also be true in the case of a legislator serving as a delegate to a constitutional convention. Nor would there be any problem about the convention being an executive body; clearly it would not be.

In a recent opinion (67-4) this office held that a legislator could serve as a commissioner on the Uniform State Laws Commission since, under the tests laid down in the **Fernandez** case, *supra*, this was not a civil office within the purview of Article 4, Section 28.

Your third question is whether legislators can designate themselves as delegates to a constitutional convention. This question is premature for the following reason: This session of the legislature cannot do so.

Article 19, Section 2, New Mexico Constitution, the provision for calling a constitutional convention, requires a three-step procedure just to **call** a constitutional convention.

First, if the legislature by the necessary vote "shall deem it necessary to call a convention to revise or amend this Constitution, they shall submit the **question of calling** such convention to the electors at the next **general** election. . . ." This contemplates a vote only on whether or not a convention should be called.

Second, a majority of all the electors voting on this question must vote in favor of calling a convention.

Third, the legislature then at its **next** session must **provide by law** for the calling of this constitutional convention. The convention is to consist of at least as many delegates as there are members of the house of representatives.

It is the legislative session **after** the electorate's approval of a convention that is to provide the method of delegate selections, etc.

We do not now answer the question whether the legislative session following the electorate's approval of the call could designate certain legislators or all legislators to be delegates to a constitutional convention because the matter is too premature.

By: Oliver E. Payne

Deputy Attorney General