

Opinion No. 67-91

July 17, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Morris Stagner District Attorney Ninth Judicial District Clovis, New Mexico

QUESTION

QUESTION

May the district health officer of the department of public health be appointed to the office of coroner provided that he is a licensed physician?

CONCLUSION

No.

OPINION

{*132} **ANALYSIS**

The office of coroner is created in each county with a population of 30,000 persons or more by the terms of Section 15-43-43, N.M.S.A., 1953 Compilation, as amended, Laws 1967, Chapter 93. That statute provides:

"15-43-43. OFFICE OF CORONER -- CREATION -- QUALIFICATION. -- The office of coroner is created in each county with a population of thirty thousand persons or more in the last federal decennial census. In any other county, the board of county commissioners may create the office of coroner by resolution. The board of county commissioners shall fix the compensation and appoint a licensed physician to hold the office of coroner for a term of two years unless removed for cause. The coroner shall take the oath prescribed for state officers before he qualifies for office."

Each district health board is {*133} given the power to appoint and employ a district health officers subject to the qualifications set by regulations promulgated by the State Board of Public Health. Sections 12-2-3 and 12-2-4, N.M.S.A., 1953 Compilation (1965 P.S.).

Section 12-2-6, N.M.S.A., 1953 Compilation (1965 P.S.), provides the amount of compensation to be paid a district health officer and prohibits private practice. Section 12-2-6, supra, states:

"District health officer -- Compensation -- Appropriation -- Private practice prohibited -- Exception. -- Each district health officer shall receive a minimum salary of nine thousand

dollars (\$ 9,000), with a maximum of thirteen thousand two hundred dollars (\$ 13,200) per year. The salary shall constitute full salary for the district health officers and they shall receive no other salary payment or fees from any other public source. No district health officer shall engage in the private practice of medicine, maintain an office for the practice of medicine, nor accept nor receive any fee, gratuity or emolument of any form for rendering medical or surgical service to any citizen of this state, except that permission for such practice may be given by the state board of health in any district, the board of which has declared an emergency to exist. Funds are to be provided as follows: forty-eight hundred dollars (\$ 4,800) shall be provided by each of the ten [10] health districts from county health funds prorated in each district among the counties composing the district according to the assessed valuation of each county, and any additional funds required for travel and any increase in salary over the minimum as outlined above, based on qualifications and service as approved by the state board of public health and the district health board, shall be allocated from the general fund appropriation as hereinafter provided. The funds so required from each county shall be remitted to the state treasurer, who shall set up a special account to be known as the district health officer's fund and shall credit to this fund the funds so required from the counties and from the special appropriation from the state general fund.. The forty-eight thousand dollars (\$ 48,000) to be contributed by the ten [10] health districts and the forty-two thousand dollars (\$ 42,000) special appropriation from the state general fund shall be appropriated annually for the purpose of this act (12-2-1 to 12-2-15). This special appropriation from the state general fund shall be included in and not be in addition to the amount allowed by the general appropriations act. All expenditures from said fund shall be disbursed upon vouchers of the state department of public health. Funds now held by the state treasurer in the district health fund will remain in this fund and be used for the purpose of this act."

Upon comparing the statutory qualifications necessary for a coroner, Section 15-43-43, supra, and the statutory compensation and prohibitions placed upon a district health officer, we are of the opinion that a district health officer cannot be appointed coroner. First, each district health officer is to receive a salary of not less than \$ 9,000 nor more than \$ 13,000 per year. By the terms of Section 12-2-6, supra, district health officers "shall receive no other salary, payment or fees from any other public source." Finally, it is clear that under the terms of Section 12-2-6, supra, the position of district health officer was intended by the legislature to constitute a full-time position. The offices of coroner and district health officer, if held by the same person, would be physically incompatible. Therefore, we conclude that the offices of district {*134} health officer and coroner may not be held by the same person.

By: Paul J. Lacy

Assistant Attorney General