

Opinion No. 68-121

December 17, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Richard H. Folmar Assistant Director New Mexico Legislative Council 334 State Capitol Santa Fe, New Mexico 87501

QUESTIONS

1. May a member of the twenty-ninth legislature legally be employed by the Construction Industries Commission, Section 67-35-1, et seq. N.M.S.A., 1953 Compilation (P.S.)?
2. May a member of the twenty-ninth legislature who resigns his position as a member of such legislature be legally employed by the Construction Industries Commission?

CONCLUSIONS

1. No.
2. No.

OPINION

{*196} ANALYSIS

The Construction Industries Commission is operated through public funds. Chapter 2, page 1672, Laws of 1967.

Your first question is controlled by Section 2-1-4, N.M.S.A., 1953 Compilation. It states:

"From and after January 1, 1945, it shall be unlawful for any member of the legislature, **during the term for which he is elected** to contract for or receive any compensation for services performed as an officer or employee of the state, except such compensation and expense money as he is entitled to receive as a member of the legislature." (Emphasis supplied.)

As to your first question, the above language is clear. The answer is No.

The fact that a legislator resigns does not alter the result. Opinion of the Attorney General No. 58-39, issued February 20, 1958. This office said, in that opinion:

"[T]his office is extremely dubious as to the legality of the compensation paid a professor at the university while he is receiving compensation and expenses as a

member of the Legislature, **or during the term for which he was so elected.**"
(Emphasis supplied.)

The answer to your second question is No. Any other conclusion would allow a legislator to serve in his elective capacity during the legislative session, resign immediately thereafter, and as a state employee, obtain the fruits of his efforts expended during the legislative session.

By: Donald W. Miller

Assistant Attorney General