

Opinion No. 71-34

February 25, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Bruce King Governor State of New Mexico Legislative-Executive Bldg. Santa Fe, New Mexico 87501

QUESTIONS

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Does a conflict exist which would prohibit one from serving as both a member of a county commission and a member of the State Racing Commission?

CONCLUSION

No. See Analysis.

OPINION

{*49} ANALYSIS

Whether one person may hold the office of county commissioner while also serving as a member of the State Racing Commission is a question determined by the definition of "incompatibility of office" set forth in **Haymaker v. State ex rel. McCain**, 22 N.M. 400, 163 P.248 (1917):

"The incompatibility between two offices, which upon the acceptance of the one by the incumbent of the other operates to vacate the latter, is not simply a physical impossibility to discharge the duties of both offices at the same time, but it is an inconsistency in the functions of the two offices as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both."

Opinion of the Attorney General No. 3196, dated June 27, 1939, held that a county commissioner could also hold another public office, so long as that office did not require the performance of duties incompatible with those required of him as commissioner. While many opinions followed in which the office of county commissioner was compared with various other offices in a determination of compatibility, we find no analysis of the exact question presented here. Therefore, we will proceed with an examination of the duties of each office to determine if, under the **Haymaker** rule, such offices are compatible.

The duties of county commissioner include: (1) the power to make such orders concerning the property belonging to the county as they may deem expedient, Section 15-37-12, N.M.S.A., 1953 Comp.; (2) the settlement and examination of all financial accounts of the county, Section 15-37-15, N.M.S.A., 1953 Comp.; (3) responsibility for the building and repairing all county buildings, Section 15-37-15, **supra**; (4) the apportionment and collection of taxes, Section 15-37-15, **supra**; (5) the representation of the county where no other provision is made by law, Section 15-37-16, N.M.S.A., 1953 Comp.; (6) setting salaries of employees and employing a county manager, Section 15-37-16.1, N.M.S.A., 1953 Comp. (1969 P.S.); and (7) creation and organization of voting precincts, Section 15-37-18, N.M.S.A., 1953 Comp. (1969 P.S.). The board of county commissioners hold meetings at regular scheduled dates, Section 15-37-7, N.M.S.A., 1953 Comp. and in return for performance of the above duties, county commissioners receive salaries. Sections 15-43-4 through 15-43-4.8 and 15-43-5.1, N.M.S.A., 1953 Comp.

Members of the State Racing Commission receive no salary but "shall be allowed expenses incurred in the necessary transaction of official business of the commission." Section 60-6-2, N.M.S.A., 1953 Comp. Duties of the State Racing Commission are set forth at Section 60-6-2, **supra**:

{*50} "The New Mexico racing commission shall have the power to grant and/or refuse and revoke licenses; to make rules and regulations for the holding, conducting and operating of all race meets and races held in the state, to fix and set racing dates; to make a biennial report to the governor of its administration of the racing laws . . ."

The determination by the Racing Commission on an applicant's eligibility for a license shall be "final and conclusive and not subject to any appeal." Section 60-6-5, N.M.S.A., 1953 Comp. Compare Section 60-7-1, N.M.S.A., 1953 Comp.

According to the **Haymaker** standards set forth above, incompatibility of office results from either physical impossibility to discharge the duties of both offices at the same time or where one is subordinate to the other or where contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both offices. In the instant case, it appears that both offices could be held by the same individual without a problem of physical impossibility, as meetings of the county commission and hearings of the racing commission are strictly limited. Neither is a "full-time" job as one has no remuneration and the other has a salary too low to be considered pay for fulltime employment. In our opinion, a review of the powers, duties, and salaries of the office of county commissioner and state racing commissioner discloses no apparent incompatibility between the two offices as the duties and powers of one office are in no way subordinate to the duties and powers of the other office. We therefore conclude that an individual can hold both the office of county commissioner and state racing commissioner at the same time.

By: Leila Andrews

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