

Opinion No. 73-08

January 29, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Aubrey L. Dunn New Mexico State Senator Legislative-Executive Building Santa Fe, New Mexico 87501

QUESTIONS

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- 1) Would a statute enacted in the present legislative session to change the office of district attorney by legislative mandate from part-time to full-time effective during the present term of office be an unconstitutional change in the term of office?
- 2) Would a statute enacted in the present legislative session to change the office of district attorney at the elective option of the district attorney from part-time to full-time effective during the present term of office be an unconstitutional change in the term of office?
- 3) Regarding Article IV, Section 27, is House Bill 66 in conflict with the section of the Constitution concerning increases and compensation of public officers during their term of office?

CONCLUSIONS

- 1) No.
- 2) No.
- 3) No.

OPINION

{*15} ANALYSIS

Since House Bill 66 in no way changes the four year term of office for district attorneys prescribed by Article VI, Section 27, New Mexico Constitution, we assume that the phraseology in your first two questions "change in the term of office" means "change **during** the term of office."

In answer to your first two questions, it should be noted initially that a public officer has no contractual right or agreement with the public as to his duties. Additional duties may be imposed upon him at any time by the Legislature. **Ahearn v. Bailey**, 104 Ariz. 250,

451 P.2d 30 (1969); **Winter v. Allen**, 212 Tenn. 84, 367 S.W.2d 785 (1963); **People v. Barrett**, 382 Ill. 321, 46 N.E.2d 951 (1943). Adding to an elective official's duties during his term of office is nothing new or unusual. If an example is needed, the office of the Attorney General provides an ideal one. See, e.g., Sections 49-12-5, 49-15-13, 50-16-10, 50-17-3, 67-33-5, N.M.S.A., 1953 Comp., all of which increased the duties of attorneys general during their term of office.

All the Legislature is doing by making the office full-time, either at the option of the district attorney or without such an option, is increasing the public duties of the district attorneys -- at least timewise. The Constitution expressly permits this in Article VI, Section 24 when it states: "There shall be a district attorney for each judicial district, who . . . shall perform such duties . . . as may be prescribed by law." (Emphasis added). Certainly there is nothing in the Constitution that decrees the office of district attorney is, or must be, a part-time position.

Your third question brings into focus the following provision in Article IV, Section 27, New Mexico Constitution:

". . . nor shall the compensation of any officer be increased or diminished during his term of office, **except as otherwise provided in this Constitution.**" (Emphasis added.)

The January 11, 1973 Memorandum Opinion by the Santa Fe District Court in **State ex rel. Thompson v. Olmstead, et al.**, No. 45038, contains an excellent historical resume tracing the evolution of Article IV, Section 27 in the Constitutional Convention, particularly the addition thereto of the exception (underlined above) to the absolute prohibition against salary increases for public officials during their term of office.

There is such an exception for the office of district attorney contained in {*16} Article VI, Section 24, New Mexico Constitution, which states that the district attorney shall "receive such salary as may be prescribed by law." It does **not** say "as may be prescribed by law **during his term of office.**" The constitutional salary provision for district attorneys is almost identical to the provisions relating to judicial salaries (Article VI, Sections 11, 17, 28, N.M. Const.) which permitted the Legislature, during its last session, to increase the salaries of district and court of appeals' judges and supreme court justices during their terms of office. Sections 16-2-1.1, 16-3-3, 16-7-3, N.M.S.A., 1953 Comp. (1972 Interim Supp.).

When the **Constitution itself** says that the salary for a particular office "shall be as prescribed by law," without any limiting phrase, such a provision must be construed as bringing the office within the "except as otherwise provided in this Constitution" proviso of Article IV, Section 27, New Mexico Constitution.

By: Oliver E. Payne

Deputy Attorney General