

April 14, 2008 State Legislator Simultaneously Running for Re-election and for County Commission

The Honorable Miguel P. García
New Mexico State Representative
1118 La Font Road SW
Albuquerque, NM 87105

Re: Opinion Request – State Legislator Simultaneously Running for Re-election and for County Commission

Dear Representative García:

You have asked whether a state legislator may seek re-election to his or her legislative seat and run for county commissioner in the same election cycle without violating any constitutional or statutory provisions of New Mexico law. Based on our examination of the relevant New Mexico constitutional, statutory and case law authorities, and on the information available to us at this time, we conclude that an incumbent state legislator is not prohibited from simultaneously seeking re-election to his or her legislative seat and running for county commission in the same election cycle. We note, however, that Article IV, Section 3 of the New Mexico Constitution prohibits members of the state legislature from also serving as elected county officials.

As a preliminary matter, there are several constitutional and statutory provisions that limit a legislator's ability to hold another public office during the term for which he or she is elected.[1] Article III, Section 1 of the New Mexico constitution precludes a state legislator from exercising any of the powers belonging to the executive or judicial branches of the state.[2] Article IV, Section 3 prohibits a state legislator from holding any office of trust or profit with the state, county or national governments. Article IV, Section 28 of the state constitution precludes a state legislator from being *appointed* to any civil office in the state during the term for which s/he is elected.[3] None of these constitutional provisions appear to limit a legislator's ability to run for more than one office in the same election cycle.

NMSA 1978, Sections 2-1-3 and 2-1-4 (1977) prohibit a state legislator from receiving compensation for services performed as an officer or employee of the state.[4] These statutory provisions, however, do not prohibit a member of the legislature from *seeking election* to more than one office. [5]

Article IV, Section 3 of the state constitution does prohibit a state legislator from serving as a member of the legislature while holding any office in state, county or national government. It provides in pertinent part that:

No person shall be eligible to serve in the legislature who, at the time of qualifying, holds any office of trust or profit with the state, county or national governments....

(Emphasis added). The unambiguous language of this provision makes clear that a member of the legislature may not hold another public office with the state, a county or the national government at the time he or she is sworn and seated as a member of the legislature.[6] The basic purpose of this and similar constitutional provisions is to prevent the participation of a legislator in the deliberations and enactments of laws pertaining to an office in which the legislator may subsequently acquire a personal interest. See N.M. Atty. Gen. Op. 62-145 (1962), citing State ex rel. Pickerell v. Myers, 359 P.2d 757 (Ariz. 1961). While this constitutional provision does not preclude a legislator from seeking re-election to his or her legislative seat and running for county commissioner in the same election cycle, it plainly does not allow the legislator, if re-elected, to also serve as county commissioner.

Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Very truly yours,

SALLY MALAVÉ
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General
The Honorable Mary Herrera, New Mexico Secretary of State

[1] For purposes of this analysis, we assume that no county ordinance limits the ability of a person holding another elective office to run for county commissioner in the county.

[2] Article III, § 1 states in pertinent part:

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers belonging to one of these departments shall exercise any powers belonging to either of the others....

[3] See State ex rel. Anaya v. McBride, 88 N.M. 244, 251-2 (1975) (N.M. Const., art. IV, § 28 applies only to *appointments* and not to *elections*).

[4] More precisely, NMSA 1978, Section 2-1-3 makes it unlawful for a state legislator "to 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," while NMSA 1978, Section 2-1-4 makes it unlawful for "any officer of the state of New Mexico to pay to any member of the legislature compensation for services rendered the state of New Mexico as an officer or employee thereof except

such compensation and expense money he is entitled to receive as member of the legislature.”

[5] See State ex rel. Stratton v. Roswell Independent Schools, 111 N.M. 495, 502 (Ct. App. 1991); see also N.M. Atty. Gen. Op. 77-26 (Sections 2-1-3 and –4 do not include officers or employees of political subdivisions, such as counties, municipalities, or school districts).

[6] A person does not become a member of the legislature simply by election thereto. See State ex rel. Pickerell v. Myers, 359 P.2d 757, 759 (Ariz. 1961). Rather, a person becomes a member when the house takes affirmative action and determines the qualifications of those seeking to be seated. See id.