

Opinion No. 14-1334

September 23, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Honorable Antonio Lucero, Secretary of State, Santa Fe, New Mexico.

NOTARY PUBLIC.

Re-appointment of notary public who is a member of the legislature.

OPINION

{*197} I have before me, by reference from your office, a letter from a member of the state legislature relative to his re-appointment as a notary public, in which he says that, having looked up the provisions of the constitution, he has reached the conclusion that there is no prohibition against such re-appointment on account of his being a member of the legislature, but he suggests that you submit the question to the Attorney General for his opinion.

The spirit of the constitution on this subject, if we consider one section alone, would not be violated by such an appointment. Section 3 of Article IV of the Constitution declares that no person shall be eligible to the legislature who, at the time of qualifying, holds any office of trust or profit, except notaries public and officers of the militia who receive no salary. The framers of the constitution obviously thought that there was no incompatibility in the same person being a notary and a member of the legislature, and the conclusion reached by your correspondent must have been based upon this idea.

That section, however, refers only to the eligibility of a member of the legislature at the time of qualifying as such member, and has no reference to the appointment of a member of the legislature to an office. Section 28 of the same article says that no member of the legislature shall, during the term for which he was elected, be appointed to any civil office in the state. There is no doubt that a notary public is a civil officer, and I am not quite able to persuade myself that a re-appointment, so-called, is not within this prohibition. Upon the expiration of the four years' term for which notaries are appointed the official existence of the notary comes to an end and a new appointment is necessary just as much as it would be for a person who was appointed for the first time. Moreover such an appointment would be in violation of the spirit of the next clause of the same section, although not within its letter. That clause prohibits the appointment of a member of the legislature, within one year after the term for which he was elected, to any civil office the emoluments of which were increased during such term. By Chapter 47 of the Laws of 1913 the emoluments of notaries public were distinctly increased. The term of office of members of the state legislature has not yet terminated, so that reference to an appointment within one year after such term would not be literally applicable.

I am, therefore, of opinion that the appointment ought not to be made, although I would greatly prefer to reach a different conclusion. {**198*} The matter cannot, however, be of any great practical importance to your correspondent, whose letter I return herewith.