

Opinion No. 17-1958

March 27, 1917

BY: HARRY L. PATTON, Attorney General

TO: Hon. W. E. Lindsey, Governor, Santa Fe, New Mexico.

Member of Legislature Cannot Be Appointed Notary Public.

OPINION

I am in receipt of your letter of the 24th inst. in which you ask my opinion as to whether or not a member of the legislature may be appointed notary public during the term for which he was elected. In reply will say that a part of Article 4, Section 28 of the Constitution reads as follows:

"No member of the legislature shall, during the term for which he was elected, be appointed to any civil office in the State."

Unquestionably the office of notary public is a civil office in the State and is likewise an appointive office. If there were no further constitutional provisions upon this subject, the question would be easy of solution. The other provision of the constitution from which some confusion might arise appears in Article 4, Section 3 as follows:

"No person shall be eligible to the legislature who, at the time of qualifying, holds any office of trust or profit under the state, county or national government, except notaries public and officers of the militia, who receive no salary."

At first blush the apparent contradiction of the two provisions quoted would present a perplexing problem. Under Section 3 a notary public might be elected as a member of the legislature and might continue to hold the office of notary public during his term of office as a member of the legislature. On the other hand, under Section 28, if he had not already been appointed notary public, a member of the legislature could not be appointed to the office of notary public during his term of office. This would appear to be a discrimination in favor of the one who was appointed notary public before his election. It might be reasoned that inasmuch as a notary public could be elected to the legislature, a member of the legislature might likewise be appointed notary public, and that such intent was expressed by the framers of the constitution in Section 3. Notwithstanding such argument, the framers of the constitution could have excepted notaries public from the provisions of Section 28, but they did not do so. The established rule of construction applicable to statutes also applies to the construction of constitutions. The whole instrument is to be examined with the view of ascertaining the meaning of each and every part. The presumption and legal intendment is that each and every clause in a written constitution has been inserted for some useful purpose, and therefore, the instrument must be construed as a whole in order that its intent and

general purposes may be ascertained; and as a necessary result of this rule it follows that wherever it is possible to do so each provision must be construed so that it shall harmonize with all others, without distorting the meaning of any of such provision, to the end that the intent of the framers may be ascertained and carried out and effect given to the instrument as a whole. Also constitutional provisions must be construed with reference to such other when relating to the same subject matter. Applying such rules of construction, had the framers of the constitution intended that a member of the legislature might be appointed notary public, why did they not make such exception in Section 28? To say that such intention existed would be reading into the constitution a clause that easily might have been expressed by the framers of the constitution, who evidently had in mind the fact that they had made the exception expressed in Section 3.

Upon first impression it might appear absurd that the constitution permitted a notary public to be elected to the legislature but would not permit a member of the legislature to be appointed notary public. However, upon giving attention to the object of the framers of the constitution in placing such restrictions in the constitution, the reason for the distinction may be seen. It is hard to conceive of any harm that might arise from a notary public being elected a member of the legislature. On the other hand, the objection to a member of the legislature being appointed to any civil office is founded obviously upon the theory that a member of the legislature by his acts and conduct might ingratiate himself with the appointive power of the state, or might use his office as a legislator so that he would place the Governor under political obligations to him to such an extent that he would be the recipient of appointive offices.

In my opinion the appointment of a member of the legislature as notary public would violate the provisions of our state constitution.