

Opinion No. 25-3790

January 21, 1925

BY: JOHN W. ARMSTRONG, Attorney General

TO: Requested by: Hon. Carl A. Bishop, State Senator, Santa Fe, New Mexico.

Members of the Legislature may not be commissioned as Officers of the National Guard where such Office carries with it a salary or provision for pay.

OPINION

I quote your inquiry in full as follows:

"Will you please advise me whether it is legal or proper for me to serve as a Member of the Seventh Legislature of the State of New Mexico and also hold a Commission as First Lieutenant in the New Mexico National Guard. I will state that I have been relieved from all duties as such officer and receive no pay from the State or from the Government."

The provision of the State Constitution affecting the subject is 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." Sec. 3, Art. 4, St. Const.

Apparently the intention of the Constitutional Provision is to prevent members of the legislature from voting salaries or appropriations by which they may benefit. It would seem that to be temporarily relieved from the duty and thereby temporarily deprived of the pay of an officer of the National Guard will hardly satisfy the intent of the law. A leave of absence, in your case, without pay would not alter the fact if you are a commissioned officer entitled to pay when in the performance of duty. We conclude, therefore, that your resignation as an officer of the National Guard would be advisable.