

Opinion No. [29-105]

May 20, 1929

TO: Office of the Attorney General of New Mexico

STATE OFFICERS -- Member of legislature may be notary public. Section 28, Article IV Constitution.

OPINION

Within the past few days I have received several communications from members of the legislature making inquiry as to whether or not they are entitled to hold commissions as notaries public in this State in view of section 28 of article 4 of our constitution, which provides:

"Sec. 28. No member of the legislature shall, during the term for which he was elected, be appointed to any civil office in the state, nor shall he within one year thereafter be appointed to any civil office created, or the emoluments of which were increased during such term; * * *"

I have repeatedly answered this question in the affirmative, for, regardless of any technical construction which might be placed upon the words "civil office" I do not believe that the legislature intended to prevent a member of the legislature from also being a notary public. What the legislature obviously did intend was to put a stop to the old custom, which obtained before statehood, of giving out salaried positions to members of the legislature in exchange for political support. That was the real object of the insertion in the constitution of section 28 of article 4, above quoted.

Unhappily, this proposition seems to have been nicely gotten around by a construction which does not include "clerical" positions, so, of course, the evil which the constitution makers sought to prevent, can now flourish with impunity. Be that as it may, however, I do not believe, as I said above, that notaries public were ever intended to come within the constitutional inhibition. You may, therefore, issue notary public commissions to members of the legislature.