

Opinion No. 2770-0A

January 22, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. Hugh B. Woodward, District Attorney, Clayton, New Mexico.

Same Person Cannot Hold Office District Attorney, City Attorney and Member Board of Education.

OPINION

{*13} Since writing the opinion to you under date of January 8th, wherein I advised you that I saw no valid reason why you could not hold the office of District Attorney, City Attorney and member of the Board of Education, my attention has been called to possible incompatibility between the said offices, which requires me to modify that opinion.

In the event that the Town Board or the Board of Education should expend moneys or make contracts for the expenditure of moneys in excess of the limitations provided by law (the Bateman Act) it would become your duty as District Attorney to prosecute both the members of the Town Board and of the Board of Education for the violation of this act.

You, therefore, as District Attorney, would be placed in the position of prosecuting the members of the Town Board to which you are legal adviser, or of the Board of Education of which you are a member. For this reason the duties of the two offices are incompatible and should not be held by the same person.

The incompatibility goes further, for it would be your duty as District Attorney to prosecute the members of either one of the said boards for any violation of the statutes involving their official duty.

These conflicts of the duties of the two officers did not occur to me at the time I wrote you my former opinion.

For the foregoing reasons, therefore, I am constrained to hold that the duties of District Attorney are incompatible with those of City Attorney or Town Attorney, and member of the Board of Education of the town situated in your district, and for that reason that no two of the offices should be held by you at one time.

I trust that the change in the views as contained in this opinion and the one first rendered will not be the cause of any inconvenience to you.