

## Opinion No. 31-231

August 3, 1931

**BY:** E. K. Neumann, Attorney General

**TO:** Mr. W. E. Harris, Mayor, New Hobbs, New Mexico.

{\*94} We make reference to your letter of July 29th, in which you inquire as to the legality of one person holding the office of constable and mayor at the same time and in the same precinct.

Paragraph 8, Section 96-107, New Mexico Statutes 1929 Compilation, states one of the instances when an office becomes vacant, that is "by an officer accepting and undertaking to discharge the duties of another incompatible office."

Incompatibility is defined in the case of Haymaker vs. State, cited {\*95} in N.M. 400, and reads as follows:

"Incompatibility between offices is an inconsistency between the functions thereof, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both. Held that office of member of city board of education and clerk thereof are incompatible."

In the case of State ex rel Chapman vs. Truder, 289 Pac. 594 it was held that the office of District Attorney and Mayor were not incompatible, and, therefore, no legal objection existed to the same person holding both offices.

This opinion was written by Chief Justice Bickley, and was rendered in 1930.

Section 90-617 of the 1929 Compilation provides that the Mayor shall have, and exercise within the city limits, the power conferred upon sheriffs of counties, to suppress disorders and keep the peace.

In view of the above holdings of our Supreme Court, and also in view of the section just referred to, it is believed that no incompatibility, at least generally, exists between the office of mayor and constable, and for this reason, we believe that one person may legally hold both offices.

By: Frank H. Patton,

Asst. Attorney General