

## Opinion No. 31-209

July 15, 1931

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

**TO:** Mr. James N. Buac. Assistant District Attorney, Carlsbad, New Mexico.

{\*84} Your letter of July 8th makes the following inquiries:

1. Is a person employed as a jailer by the Sheriff, qualified under the law as a Deputy Sheriff?
2. Would the provision with reference to Deputy Sheriffs being legally qualified voters of this state, as set forth in Sec-Sections 33-4412 and 33-4414 apply to county jailers?
3. Has a sheriff the right to appoint a man as County jailer and finger print expert who is not a legally qualified voter of this state?
4. Is there any authority under the law for the Board of County commissioners, or other county officers to employ a person to check personal property and prevent its removal from {\*85} the county without payment of the tax roll has not been delivtaves thereon in cases where ered to the Treasurer; and, if so, from what fund could he be paid?

1. We can see no reason why a jailer cannot be also a deputy sheriff, if duly appointed as such, and that salaries do not exceed the legal allowance. There is no prohibition against one person holding two offices, 'if there is no incompatibility. We are unable to see any incompatibility in the offices, if the latter can be classed as an officer, of deputy sheriff and jailer.

2. The second question raised must, we believe, be answered in the negative, and seriously doubt that under Section 13 of Article 5 of the New Mexico Constitution, which is as follows:

"All district, county, precinct and municipal officers, shall be residents of the political subdivisions for which they are elected or appointed."

The provision, that deputy sheriffs shall be legally qualified voters of the county, is a constitutional law. Such law was passed in 1901 long before the adoption of the Constitution.

3. The third question must be answered in the affirmative, for we doubt that any requirement other than residence and legal age can be made, for the reasons set forth in answering question No. 2.

4. Sections 141-421 to 141-426 inclusive, seem to comprise the entire statutory provision for distraint of personal property about to be removed out of the state prior to the time the tax rolls are completed and in the hands of the County Treasurer. There is apparently no authority for the employment of a person to act in the capacity you mention in question four of your letter, and so the County Commissioners having no such authority are powerless to make the employment. Duties mentioned in the law relating to such distraint are placed with the assessor, so that it might be possible for the commissioners, if funds are available in the budget for that office, to authorize the assessor or his deputy to do such checking, as contemplated by you, allowing only necessary traveling and hotel expenses.