

Opinion No. 33-603

May 31, 1933

BY: E. K. NEUMANN, Attorney General

TO: Hon. J. W. Tackett, 222 So. High Street, Albuquerque, New Mexico.

{*52} As a member of the State Senate, you have requested an interpretation of Section 37 of Article IV of the State Constitution as to whether a regular employee of a railroad company is included within the prohibition.

This provision reads as follows:

"It shall not be lawful for a member of the Legislature to use a pass, or to purchase or receive transportation over any railroad upon terms not open to the general public; and the violation of this section shall work a forfeiture of the office."

As we understand it employees of the railroads are entitled to passes of various kinds when they have been in service for a specified time. After {*53} a certain prescribed period of time such employees are entitled to annual passes renewable each year.

This is in fact a form of compensation, a concession or bonus awarded by the railroad company in recognition of meritorious service performed by the employee.

The Constitutional provision was adopted for the primary purpose of eliminating graft upon the part of members of the legislature and to relieve such members of any feeling of obligation toward a railroad company by virtue of the possession of a free pass.

We doubt if cases where a railroad employee becomes a member of the legislature is within the purview of this provision. We doubt if such thought ever was in the minds of the framers of the Constitution.

To interpret the phraseology literally would result in compelling such employee-member to surrender his annual transportation or other pass which he has earned because of service for the railroad company.

Such is not the intention of the Constitution and we, therefore, hold that the prohibition does not apply to bona fide employees of a railroad company.

By: FRANK H. PATTON,

Asst. Attorney General