

Opinion No. 37-1545

March 2, 1937

BY: FRANK H. PATTON, Attorney General

TO: Honorable E. M. Barber Member State Legislature Santa Fe, New Mexico

{*56} Your letter of March 3rd calls for an interpretation of Section 37, Article IV of the State Constitution insofar as it has application to one who is a member of the legislature and also regularly employed by a railroad company. The 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."

Under date of May 31st, 1933, in opinion No. 603, addressed to Honorable J. W. Tackett, Albuquerque, New Mexico, as a member of the State Senate, we held that the constitutional provision was adopted for {*57} the primary purpose of eliminating graft upon the part of members of the legislature and to relieve such member of any feeling of obligation toward a railroad company by virtue of possession of a free pass.

We further stated in said opinion that we doubted if cases where railroad employees became members of the legislature was within the purview of this provision.

As we understand it from your letter, the granting to you by the railway company of the pass is in reality a form of compensation for your services as attorney for the railroad company.

We do not believe that it was the intention of the framers of the Constitution that an interpretation be placed upon this provision which would result in compelling employees who happen to become members of the legislature to surrender such transportation or free passes which have been earned because of service for the railroad company.

I have also checked some of the constitutional provisions of other states and I find that the State of Virginia has a provision similar to that in New Mexico although more comprehensive.

The provision in that State prohibited the granting of passes to state, county, district and municipal officers and any officer accepting such pass forfeited his office.

It was held that such provision did not apply to a city councilman who was employed by a railroad company upon the ground that the issuance of the pass was in consideration of services rendered and part of the compensation.

It is, therefore, my opinion that the acceptance of such pass by you as an attorney for and employed by the railroad company would not be within the contemplation of the constitutional provision above quoted and I do not believe it applicable to such cases as you have outlined.