

## Opinion No. 37-1744

August 18, 1937

**BY:** FRANK H. PATTON, Attorney General

**TO:** Hon. J. O. Garcia State Auditor Santa Fe, New Mexico

{\*152} Your letter of August 17th refers to Section 2 of Chapter 156 of the Session Laws of 1937, whereby the office of Director of Transportation is created, and you request an opinion as to whether a member of the Thirteenth Legislature may legally be appointed as such Director of Transportation.

I assume, of course, that you are referring to the recent appointment of Mr. Rufus H. Wamel of Animas, New Mexico, as Director of School Transportation, authority for such appointment being granted by said chapter.

Mr. Wamel was a member of the recent legislature which created this office and authorized such employment and before the adjournment of the legislature he consulted me in regard to his qualifications and eligibility to hold this position stating that he wanted it and that he could obtain it.

I referred Mr. Wamel to Section 28, Article IV of the Constitution of the State of New Mexico, which reads as follows:

"Sec. 28. No member of the legislature shall, during the term for which he was elected, be appointed to any civil office in the state, nor shall he within one year thereafter be appointed to any civil office created, or the emoluments of which were increased during such term; nor shall any member of the legislature during the term for which he was elected nor within one year thereafter, be interested directly or indirectly in any contract with the state or any municipality thereof, which was authorized by any law passed during such term."

I expressed it as my opinion that Mr. Wamel was disqualified and was not eligible to accept this position. I also discussed the matter with Senator Royal, also a member of the Thirteenth Legislature, who interceded in behalf of Mr. Wamel and I expressed the same opinion to Mr. Royal.

It will be noted that the above quoted section provides that no member of the legislature, during the term for which he was elected nor within one year thereafter, shall be interested directly or indirectly in any contract with the state or any municipality thereof, which was authorized by any law passed during such term.

{\*153} The Act in question provides that the State Board of Education may appoint, with the approval of the Governor, a Director of Transportation, who shall work in conjunction with the State Educational Budget Auditor in carrying out the terms of the Act and he is

given authority, with the approval of the State Board of Education, to establish standards of transportation including the establishment of bus routes, requirements of drivers and specifications for busses used in the transportation of pupils.

The first part of the constitutional provision contains an inhibition against members of the legislature holding civil offices during the term for which such legislator was elected. It also contains an inhibition against the legislator being appointed to any civil office created during his term, nor shall such legislator be appointed within one year after the termination of his term of office.

The office of Director of Transportation may or may not be a civil office. If it is a civil office, of course Mr. Wamel may not, under the Constitution, be legally appointed, but regardless of that fact it occurs to me that the pertinent provision which would disqualify Mr. Wamel from holding this position is that portion of the constitutional provision relative to a contract with the State of New Mexico, which was authorized by a law passed during his term as a legislator and by the legislature of which he was a member.

The question then arises, "Does the term contract as used in the constitutional provision include a contract of employment?" It is my belief that it does. The constitutional provision in its entirety is directed against members of the legislature and prohibits them from holding civil offices or being interested in contracts with the State of New Mexico during the term for which they were elected.

Had the constitutional framers desired to exempt or except contracts of employment from the inhibition contained in said constitutional provision, it would have been an easy matter to do so but we find that such has not been the case.

In view of the foregoing, it is my belief and opinion that the appointment of Mr. Wamel, a member of the Thirteenth Legislature, to the office of Director of Transportation, a position authorized by said session of the legislature, is violative of the provisions of the constitutional provision herein mentioned, and that the acceptance of such position by Mr. Wamel is likewise contrary to the provisions of said section.