

Opinion No. 39-3137

May 17, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. J. O. Walton, Assistant District Attorney, Hobbs, Nem Mexico.

{*50} In your letter of May 15 you inquire whether it is unlawful for a county commissioner to accept an appointive position with some state department, such as the Highway Department or the Cattle Sanitary Board.

The holding of one office does not of itself disqualify a person from holding another office at the same time unless (1) there is a statute prohibiting it, (2) the offices are incompatible (46 C.J. 941).

I know of no statute prohibiting a county commissioner from accepting any other office; and I do not know of anything which would make the office of county commissioner incompatible with an office under the Cattle Sanitary Board or the State Highway Department.

For two offices to be incompatible there must be "an inconsistency in the functions of the two, 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." *Maymaker* {*51} vs. State, 22 N.M. 400; *State vs. Truder*, 35 N.M. 49.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.