

**Opinion No. 41-3866**

August 14, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. G. T. Watts District Attorney Roswell, New Mexico

{\*88} Your letter dated August 8, 1941, requests this office for an opinion as to whether or not a duly elected member of the Legislature is barred by the Constitution from becoming an assistant district attorney during the term for which he was elected.

Section 28, Article IV, New Mexico Constitution, provides in part:

"No member of the legislature shall during the term for which he was elected, be appointed to any civil office in the state, \* \* \*"

Words and Phrases, Vol. 7, defines a civil office as one in which part of the sovereignty of the state has been vested by the Legislature or Constitution. Section 24, Article VI, New Mexico Constitution, provides that the district attorney shall be the law officer of the state and of the counties within his district. Section 29-102, New Mexico Statutes, Annotated, 1929 Compilation, delegates to assistant district attorneys the duties imposed by law upon or required of the district attorney.

In view of the foregoing, I am of the opinion that an assistant District attorney is a civil officer, that part of the sovereign power has been vested in him, and further, that a duly elected member of the Legislature may not be appointed to the office of assistant district attorney.

The foregoing ruling is based upon *Satterwhite vs. Garrison* (Calif. 1917), 168 Pac. 1053, which held that a deputy district attorney was a public officer, and that a member of the Legislature could not be appointed to that position by reason of a constitutional prohibition against the appointment of any member of the Legislature to a public office. The cases of *State vs. Fernandez*, 40 N.M. 288 and *State vs. Otero*, 267 Pac. 68, 33 N.M. 310, are not in point.

Trusting that the foregoing sufficiently answers your inquiry, I remain,

By GEO. H. HUNKER, Jr.

Asst. Atty. General