

Opinion No. 42-4204

December 22, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Scott H. Mabry Assistant District Attorney Albuquerque, New Mexico

{*292} We have your letter of December 14, 1942, wherein you state that one of the county commissioners of Bernalillo County was elected at the last general election and will take office January 1, 1943. In view of this fact situation, you request an official opinion of this office on whether or not such county commissioner will be barred from holding either a job on the state payroll or that of a paid deputy sheriff.

In connection with the deputy sheriff position, you point out that the county commissioner's duties, among other things, would be approving and paying bills and payrolls in the sheriff's department.

I call your attention to Section 10-301, subsection (8), New Mexico Statutes Annotated, 1941, which provides that an office such as herein involved becomes vacant by accepting and undertaking to discharge the duties of another incompatible office.

In the case of Haymaker vs. State, 22 N.M. 400, the rule was stated that incompatibility between offices exists 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.

Under this case it is my opinion that a county commissioner who would accept the office of deputy sheriff would be undertaking the duties of an incompatible office and therefore a vacancy would arise in the office of County Commissioner.

In answer to the first part of your question, it is my opinion that a county commissioner may hold a state position. However, it would be advisable to closely scrutinize the duties of such state office to see whether or not it would be incompatible with the office of county commissioner.

It is further my belief that such county commissioner should acquaint himself with the provisions of Sections 10-301 and 10-304, New Mexico Statutes Annotated, 1941, so as to be sure not to violate any of such sections. This statement is made merely because the duties of any possible {*293} state office that he might accept are not set forth so as to make a specific ruling in connection with such state office.

By HARRY L. BIGBEE

Asst. Atty. General