

## Opinion No. 43-4293

May 21, 1943

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

**TO:** Mr. Guy Shepard, State Treasurer, Santa Fe, New Mexico

We have your letter of May 17, 1943, in which you request an opinion of this office as to whether or not it is legal for you to receive additional compensation above what is provided for salary as State Treasurer for duties imposed upon the Treasurer by the Special Session of the New Mexico Legislature in 1936 with reference to administering the duties of the Unemployment Compensation Fund. You state that Mr. J. J. Connelly as State Treasurer drew \$ 2400.00 per year from the State Board of Finance as Treasurer of the Unemployment Compensation Commission in addition to his regular salary as State Treasurer and during the term of Mr. Rex French, he, also, drew \$ 1400.00 per year in the same capacity.

Section 57-809 of the New Mexico 1941 Compilation provided for the establishment of a special fund to be known as the Unemployment Compensation Fund, which shall be administered by the Commission for the purpose of this act. Sub-division B of this Section provides that the State Treasurer shall be the Treasurer and Custodian of the Fund and shall **administer** such Fund in accordance with the directions of the Commission and provides certain other duties for the Treasurer. In view of this section, it is clear that additional duties were imposed upon the State Treasurer by this act, other than those pertaining to the office of State Treasurer. We, therefore, have the question of whether or not additional compensation can be received by a constitutional officer for administering duties not pertaining to such office.

It is noted that the question of whether or not additional duties were imposed upon you, since this act was effective before your candidacy, cannot be raised, as all previous Treasurers have received compensation for such additional duties which have never been accepted by any Treasurer as being duties pertaining to the office of the Treasurer of the State of New Mexico. Therefore, an identical question is presented as was determined by me in Opinion Number 4031 relating to the legality of the Justices of the Supreme Court receiving compensation for additional duties as custodians of the State Law Library. A copy of this opinion is, therefore, enclosed.

In addition to the foregoing, I call your attention to 43 Am. Jur. Page 151, Public Officers, Section 364, which provides:

"The law does not, of course, forbid extra compensation for extra services which have no affinity or connection with the duties of the office. Where the duties newly imposed upon the officer are not merely incidents of and germane to the office, but embrace a new field, and are beyond the scope and range of the office as it theretofore existed and functioned, the incumbent may be awarded extra compensation for the performance of

such duties without violating a constitutional inhibition against increase of salary during the term."

Also, see cases cited in support of this rule, which appears to be well settled in all States.

In view of the foregoing it is, therefore, my opinion that you may legally receive additional compensation from the State Board of Finance in payment for additional duties, which have been imposed upon your office.

Hoping that the above fully answers your questions, I remain