

Opinion No. 43-4333

July 9, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico

We have your letter of June 25, 1943, requesting an opinion concerning whether appointed officials of the state, counties and municipalities are to serve the same term as the elected officials who appoint them.

The general rule, as stated in 46 C. J. Officers, Section 382, Page 1062, is as follows:

"Deputies, whether common law or statutory, are, where their terms are not fixed by statute, supposed to be appointed at the pleasure of the appointing power, and their deputation expires with the office upon which it depends. Deputies must, from this point of view, be distinguished from assistants to whom a fixed term has been given by law."

I also call your attention to the New Mexico case of State ex rel Ulrick v. Sanchez, 32 N.M. 265, 255 Pac. 1077, wherein the court held that the Governor has power to remove any officer appointed by him, including those appointed by and with the consent of the Senate; he is not required to make charges, give notice, or accord a hearing. This is true regardless of whether or not the statute provides a fixed term for the particular office.

In view of the above, it is my opinion that the various officers referred to, hold their office at the will of the appointing official, unless a term is fixed by statute, in which case, however, under certain circumstances, they may also be removed at will.

Hoping that the above fully answers your questions, I remain

By HARRY L. BIGBEE

Asst. Atty. General