

Opinion No. 44-4555

August 1, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. Richard F. Rowley, Acting District Attorney, Clovis, New Mexico

We are in receipt of your letter of July 27, 1944, in which you ask whether or not the same man can hold office as Probate Judge, Justice of the Peace and Police Judge at the same time.

The only statute that might prohibit such multiple office holding would be Section 10-301 of the 1941 Compilation which provides for a vacancy "(8) By an officer accepting and undertaking to discharge the duties of another incompatible office." In *Haymaker vs. State*, 22 N.M. 400, 163 Pac. 248, the Supreme Court defines incompatibility as follows:

"Incompatibility between offices is an inconsistency between the functions thereof, 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."

As it does not appear to me that the duties or functions involved in holding the offices mentioned are incompatible as hereinbefore defined, it is my opinion that the same person may discharge all three offices at the same time.

It does not appear from your letter that the man involved intends to run for Justice of the Peace as well as Probate Judge. However, in the event he should propose to do this, your attention is called to Item 6 of Section 56-307 of the 1941 Compilation which provides that no candidate's name shall appear more than once on the ballot.

By ROBERT W. WARD,

Asst. Atty. General