

Opinion No. 45-4706

May 3, 1945

BY: C. C. McCULLOH, Attorney General

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

{*59} In your letter dated May 1, 1945, you state that one of the county commissioners has been disabled because of illness from participating in any of the county affairs for the past six months, and that his condition will incapacitate him for many months to come. You inquire whether or not he should be replaced and, if so, the manner in which to proceed.

Incapacity to perform the duties of an office is not a circumstance creating a vacancy in the office under Section 10-301 of the New Mexico 1941 Compilation, although it would probably be grounds for removal under Section 10-304, as coming under the definition of failure to discharge the duties of the office. If the commissioner would be willing to resign in order to facilitate the matter, that would be the best solution. Otherwise, he continues in office until such time as he may be removed for cause.