

## Opinion No. 51-5326

January 3, 1951

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. P. F. Larrazolo Attorney for Village of Los Lunas Los Lunas, New Mexico

{\*2} This is in reply to your letter dated December 27, 1950, requesting an opinion as to whether or not the present village treasurer of Los Lunas, New Mexico, who is receiving \$ 50 a month as compensation for that office, can continue to legally act as village treasurer of that village after he qualifies as the duly elected Sheriff of Valencia County, on January 1, 1951.

I have checked the law and I fail to find that there is any incompatibility in these two offices, one being a county office and the other being a village office. There is no conflict in the duties of one with the duties of the other and the compensation of one office is paid by the county and the other one is paid by the village.

Section 70 of 42 Am. Jur. reads as follows:

"Incompatibility of offices does not, it has been said, depend upon the incidents of the offices. For instance the courts, with some few exceptions, hold that mere physical inability to perform the duties of both offices personally does not constitute incompatibility. It is to be found in the character of the offices and their relation to each other, in the subordination of the one to the other, and in the nature of the duties and functions which attach to them. Incompatibility of offices exists where there is a conflict in the duties of the offices, so that the performances of the duties of the one interferes with the performance of the duties of the other. This is something more than a physical impossibility to discharge the duties of both offices at the same time. They are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant so that, because of contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both. It is not an essential element of incompatibility of offices at common law that the clash of duty should exist in all or in the greater part of official functions. If one office is superior to the other in some of its principal or important duties, so that the exercise of such duties may conflict, to the public detriment, with the exercise of other important duties in the subordinate office, then the offices are incompatible."

I would also like you to refer to the Supreme Court case of State ex rel Gilbert, et al, v. Board of Commissioners of Sierra County, reported in 29 N.M., page 209. You will note that under paragraph 2 the provision applies to officers who have a definite and fixed tenure of office and does not embrace or apply to those who hold their offices during the pleasure of and subject to their removal by the appointing power. Assuming that the

office of the treasurer of the Village of Los Lunas is appointive, I believe that this case is in point.

It is, therefore, my opinion that the office of County Sheriff and the office of Treasurer of the Village of Los Lunas are not incompatible offices.

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