

Opinion No. 53-5746

May 1, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Roy H. Carey, Chairman Department of Game and Fish P. O. Box 711 Carlsbad, New Mexico

{*148} In your letter dated April 28, 1953 you request an opinion concerning the authority of the Governor to remove a member of the State Game Commission, who has been confirmed for a specific term by the State Senate, prior to the end of the term for which he was appointed and confirmed. You further ask, if the Governor must show cause for removal, what must be proved before the member can be removed? And thirdly, if the member so confirmed does not resign when requested to do so by the Governor, what action the Governor must institute in order to effect his removal?

Article 5, Section 5 of the State Constitution provides, in part, as follows:

"The governor shall nominate, and, by and with the consent of the senate, appoint all officers whose appointment or election is not otherwise provided for, and may remove any officer appointed by him for incompetency, neglect of duty or malfeasance in office."

In construing this power of removal by the Governor, the Supreme Court in the case entitled *State ex rel. Ulrick v. Sanchez*, 32 N.M. 265, held that this constitutional provision authorized the Governor to remove officers appointed by him during their term regardless of the fact that such appointments had been confirmed by the State Senate. The Court further held that the constitution does not require that a notice and hearing be given before a removal can be made and, therefore, no proof would be necessary of the charges made by the Governor. The only requirement apparently in an order of removal of an officer appointed by the Governor is that the order must allege one of the constitutional grounds for removal, that is, incompetency, neglect of duty or malfeasance in office. Failure to allege one of these grounds would result in the order of removal being a nullity, although a subsequent order could immediately be issued alleging one of the necessary grounds.