

**Opinion No. 56-6456**

June 1, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. J. C. Enloe, District Attorney, Seventh Judicial District, Socorro, New Mexico

You have presented for our opinion the question as to whether or not there is incompatibility between the positions of member of a county hospital board and employment as a nurse of that hospital.

You are referred to *Haymaker v. State, ex rel McCain*, 22 N.M. 400, wherein incompatibility was defined. There it was held:

"In legal contemplation, incompatibility between two offices is an inconsistency between the functions of the two. The offices must subordinate, one to the other, and they must, per se, have the right to interfere with the other before they are incompatible." (citing *People v. Green*, 58 N.Y. 295; *Stubbs v. Lee*, 64 Me. 195, 18 Am. Rep. 251; *State v. Brown*, 5 R.I. 1.).

Now § 15-48-10, N.M.S.A., 1953, empowers members of the hospital boards to, among other things, ". . . employ all personnel engaged in the operation of said hospital, and to fix their compensation and to discharge them. . . ." The incompatibility between the two positions is patent. In matters of hiring and firing and the fixing of compensation, the board member would be passing upon questions directly affecting him or her as an employee of the hospital. It is our opinion that the two positions are incompatible.

By Santiago E. Campos

Assistant Attorney General