

Opinion No. 56-6481

June 28, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Nils T. Kjellstrom, Assistant District Attorney, Seventh Judicial District, Truth or Consequences, N.M.

We are in receipt of your letter of June 21 in which you request an opinion as to whether the office of County Commissioner and that of a part time Cattle Inspector and Sheep Inspector for the Cattle Sanitary Board and Sheep Sanitary Board are incompatible offices.

We have written at least two rather recent opinions relating to this question and are enclosing copies for your information. However, we have never ruled whether the office of County Commissioner and that of part time Inspector of the Cattle and Sheep Sanitary Boards are incompatible offices, but the same rule would apply in this case as in the Truder case, which is reported in 35 N.M. 49, 289 P. 594. In that case the State Supreme Court laid down the rule and said, quoting from page 51 of said opinion:

"It has not been pointed out to us and we are unable to discover from our examination of the statutes prescribing the duties of the offices of the district attorney and Mayor, where one is subordinate to the other or where a contrariety and antagonism would result in the attempt of one person to faithfully and impartially discharge the duties of both."

And the Supreme Court went on to say:

"But these duties are not incompatible with those of a district attorney. Applying the test adopted in Haymaker v. State, 22 N.M. 400, 168, P. 248, L.R.A. 1917D, 210, we are of the opinion that the offices are not incompatible."

We fail to see any incompatibility between the duties of the Cattle Sanitary Board or the Sheep Sanitary Board. One is a county office and the other is a state office and the duties of each are entirely separate and apart from each other.

It is, therefore, the opinion of this office that there is no incompatibility between the offices of County Commissioner and part time Cattle Inspector and Sheep Inspector.

Trusting that this fully answers your inquiry, we remain

By Hilario Rubio

Assistant Attorney General