

Opinion No. 58-238

December 19, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General

TO: Mr. Paul W. Robinson, District Attorney, Second Judicial District, Albuquerque, New Mexico

QUESTION

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May an individual who has been elected to the office of county commissioner legally accept a salary from a teaching position in an institution of higher learning in this State, as well as the salary provided by law for acting as a county commissioner?

CONCLUSION

Yes.

OPINION

ANALYSIS

Your inquiry gives rise to the question of incompatibility between the positions of county commissioner and employment by a state institution of higher learning in a teaching capacity.

In this connection, the case of *Haymaker v. State ex rel. McCain*, 22 N.M. 400, wherein incompatibility was defined, becomes material. In that case 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).

In view of the definition quoted above, it is our opinion that the two positions are not incompatible. The two positions do not subordinate one to the other, nor do they have the right per se to interfere one with the other. A teacher in a state institution of higher learning comes under the direct control and supervision of the Board of Regents of the school in question, and no jurisdiction is exercised either directly or indirectly by the county.

We are further of the opinion that acceptance of the two salaries in question would not be violative of Article X, Section 1 of the State Constitution which provides, in part, that no county officer shall receive to his own use any fees or emoluments other than the annual salary provided by law. This prohibition applies only to those situations where extra compensation is received for performing duties prescribed by law to a particular office and for which a fixed compensation is provided. Clearly, the services performed by a school teacher do not fall within the duties prescribed by statute for the office of county commissioner. In this regard, see Attorney General's Opinion No. 3691, Attorney General's Opinions, 1923-24, page 41.

We, therefore, conclude that an individual may lawfully receive a full salary from a teaching position in an institution of higher learning as well as the salary provided by law for acting as county commissioner.