

Opinion No. 60-24

February 15, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Frank J. Dailey, Mayor City of Socorro P. O. Box 621 Socorro, New Mexico

QUESTION

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Can a mayor who is presently serving a term of office without pay and whose term expires in April, 1960, file for the position of State Senator from Socorro County on the March filing date, and also file and run for a second term as mayor on April 5, 1960, and if elected to both offices, carry on the duties of both offices at the same time?

CONCLUSION

Yes.

OPINION

{*369} ANALYSIS

Your question is asked in view of Article IV, § 28 of the Constitution of New Mexico, which reads, in part, as follows:

"No member of the legislature shall, during the term for which he was elected, be appointed to any civil office in the state, nor shall he within one year thereafter be appointed to any civil office created, or the emoluments of which were increased during such term; . . ."

It seems clear that the office of mayor is a civil office under the standards in the much cited case of **State ex rel. Gibson v. Fernandez**, 40 N.M. 288, 58 P. 2d 1197. However, this office has on two prior occasions drawn a distinction between being elected to a civil office and being appointed to a civil office. Opinion of the Attorney General No. 1776, dated April 8, 1916; Opinion of the Attorney General No. 6138, dated April 12, 1955. This distinction has also been drawn by the Supreme Court of New Mexico in the case of **Territory v. Armijo**, 14 N.M. 205. We are of the opinion, therefore, that a person who is presently mayor may hold the position of State Senator and, further, that a person may run for and be elected to and serve as mayor while holding the position of State Senator.

Another distinction to be pointed out in the question you pose is that when the person runs for mayor in April, 1960, he will not have been elected to the State Senate at that time.

At all events, we are of the opinion that a person may serve both as mayor of a city and as State Senator at the same time. In so holding, we are also of the view that there is no incompatibility between the offices.

The only other possible question that could arise as to the legality of such a situation is the requirement found in § 2-1-4, N.M.S.A., 1953 Compilation, which provides that a member of the legislature may not receive any compensation as an officer or employee of the state other than that received in his legislative capacity. There are several factors which take the present situation out of the purview of this statute, the foremost being that the position of mayor, as stated by your question, is not a paying position, so this statute is no impediment in this instance.

By: Boston E. Witt

Assistant Attorney General