

Opinion No. 60-30

February 24, 1960

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

TO: Mr. Dan Sosa, Jr. District Attorney Third Judicial District Second Floor Court House
Las Cruces, New Mexico

QUESTION

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1. Are the offices of member of the Board of Trustees of a Town and County Commissioner incompatible?
2. Are the offices of member of the Board of Trustees of a Town and County Assessor incompatible?
3. If the answers to either or both 1 and 2 are yes, must a member of the Board of Trustees of a Town resign to run for election for county Commissioner or County Assessor, as the case may be?

CONCLUSIONS

1. No.
2. No.
3. Need not be answered, however, see Analysis:

OPINION

{*380} ANALYSIS

There are no constitutional or statutory prohibitions forbidding a member of the Board of Trustees of a Town from serving at the same time as a County Commissioner or as County Assessor. Likewise, there are no constitutional or statutory prohibitions forbidding a County Commissioner or the County Assessor from serving as a member of the Board of Trustees of a Town. Therefore, a person may serve as a member of the Board of Trustees of a Town and County Commissioner or County Assessor at the same time unless the two offices held at the same time are considered legally incompatible.

The general rule of incompatibility of offices in New Mexico is succinctly set forth in **Haymaker v. State ex rel McCain**, 22 N.M. 400, 163 P. 248, where the New Mexico Supreme Court said:

"Incompatibility between offices is an inconsistency between the functions thereof, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both."

This rule was also followed in **State ex rel Chapman v. Truder**, 35 N.M. 49, 289 P. 594, which held that the Mayor of Las Vegas could also serve as District Attorney. See also our Opinion No. 5418, which held that the Mayor of Eunice could serve, at the same time, as County Commissioner.

Keeping in mind the rules above set forth in the **Haymaker** and **Truder** cases, we have reviewed the Statutes and Constitution in regard to the duties and functions of the offices of County Commissioner, County Assessor and member of the Board of Trustees of a Town and conclude that there is no incompatibility between the Commissioner's or Assessor's office and the office of Trustee of a Town.

Since our answers to your first two questions are in the negative, your third question requires no answer. However, we have recently held, in Opinion No. 59-210, a copy of which is enclosed, that in general, anyone who is a qualified elector may run for any public office. Thus, there is no general mandate that a person holding one public office resign to run for election to another public office.

By: Philip R. Ashby

Assistant Attorney General