

## Opinion No. 63-133

October 2, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** Miss Connie D. Peralta County Treasurer Catron County Reserve, New Mexico

### QUESTION

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1. May a county official or his deputy hold another job at the same time he is serving in his public capacity?
2. Do the County Sheriff and his deputies have a duty to enforce traffic laws on the state highways or is the enforcement of traffic laws primarily the duty of the State Police?

#### CONCLUSIONS

1. This depends on the particular public office or private position that the individual holds.
2. A County Sheriff and his deputies have a duty to enforce traffic laws on state highways within a county, jointly with the State Police.

### OPINION

#### {\*296} ANALYSIS

In answering your first question, consideration must be given to two different situations which present themselves.

First, if the public official or his deputy hold another public office or position, the determinative factor controlling whether such positions are incompatible depends on the nature of the two positions. One test of whether two public positions are incompatible is stated in **Haymaker v. State ex rel McCain**, 22 N.M. 400, 168 P. 248, L.R.A., 1917 D., wherein it was noted:

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 . . . The incompatibility between two offices, which upon the acceptance of the one by the incumbent of the other operates to vacate the latter, is not simply a physical impossibility to discharge the duties of both offices at the same time, but it is an inconsistency in the functions of the two offices, 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."

Second, an additional test as to whether two public offices or a public office and a private position are incompatible revolves about the particular nature of the duties of the two positions and whether they are such that both offices may not be efficiently discharged by the same person. Section 5-3-4, N.M.S.A., 1953 Compilation, provides in part that a local officer may be removed from office for "failure, neglect or refusal to discharge the duties of the office. . ." Obviously if an individual is unable to adequately and efficiently perform the duties of a public position because of the requirements of other non-related jobs of either {\*297} a public or private nature such amounts to an inability to fill the position because of a conflict of duties thus rendering such person subject to discharge.

Thus, in answer to your first question the test stated in the **Haymaker** case, supra, must be applied to ascertain whether the nature of the two positions is such that one is subordinate to the other, or whether a contrariety and antagonism would result in the attempt by one person to faithfully discharge the duties of both positions. If such is the case, then clearly the two positions are incompatible. In addition, if the duties of the two positions, either public or private, is such that the public job can not be efficiently discharged, then the duties of the two positions render such positions incompatible.

Your second question inquires as to whether the State Police or County Sheriff have the duty to enforce traffic laws on the public highways. The answer is clearly that both offices share in this responsibility and duty.

In Attorney General's Opinion No. 4252, dated March 16, 1943, it was stated that:

". . . the authority of the State Police and sheriffs within a county are concurrent, and that each has the power and duty of enforcing the laws of this state independent of the other."

The State Police are charged by statute to enforce state law without being limited by county lines. The duties of the office of the county sheriff in respect to enforcing state traffic laws within the county wherein he is elected is concurrent with that of the state police, and each has the power to make arrests for violations of such laws independent of the other.

By: Thomas A. Donnelly

Assistant Attorney General