

Opinion No. 65-156

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BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mrs. Alberta Miller, Secretary of State, State Capitol, Santa Fe, New Mexico

QUESTION

QUESTIONS ON PROPOSED CONSTITUTIONAL AMENDMENTS

1. C.A. No. 1

What is the present salary, per diem expense and mileage allowance for legislators?

2. (a) C.A. No. 5

What salary is being proposed for the judges of the courts of appeal?

2. (b) How will the first court be seated -- elective or appointive?

2. (c) What will be the first terms of office?

3. (a) C.A. No. 6

In the title of the proposed amendment reference is made to an "auditor" but in the body of the amendment reference is made to a "legislative auditor". What is the difference?

3. (b) What is his term of office and his salary?

3. (c) By whom is he to be appointed?

3. (d) What are his duties?

4. C.A. No. 7:

What is the significance of this amendment?

5. C.A. No. 8:

How would adoption of this amendment affect present procedures?

CONCLUSIONS

1. No salary. Per diem of \$ 20 per day for each day's attendance during legislative session. Mileage allowance of ten cents per mile for one trip to Santa Fe and return during the legislative session.
2. (a) Salary will be as prescribed by law.
2. (b) This depends upon the implementing legislation.
2. (c) Not more than eight years, but may be less as prescribed by law.
3. (a) No difference in practical result.
3. (b) No fixed term. Salary as prescribed by Legislative Audit Commission.
3. (c) Legislative Audit Commission.
3. (d) See analysis.
4. This amendment is proposed so that Section 1 of Article XIX may be amended to present a revision of an entire Article as one amendment.
5. Appeals from decisions of the State Engineer would be heard de novo by the district courts.

OPINION

{*264} ANALYSIS

In your first question you ask what the present salary, per diem expense and mileage allowance is for legislators. Under Article IV, Section 10, legislators receive no salary. They receive as per diem expense the sum of twenty dollars for each day's attendance during each legislative session. They receive ten cents for each mile traveled in going to and returning from Santa Fe by the usual traveled route, once each session. They cannot receive any other compensation, perquisite or allowance. Proposed Constitutional Amendment No. 1 provides that in addition to the per diem and mileage mentioned above, a legislator would receive \$ 200 a month for each month he is a member of the legislature.

In your second question, concerning proposed Constitutional Amendment No. 5, you ask what salary is being proposed for judges of the courts of appeal. The Constitutional Amendment in question does not set a salary; rather it provides that the compensation "shall be as provided by law." In answer to your next question, the proposed Constitutional Amendment does not specifically state how the first court will be selected (subsequent ones will be elected). Presumably the implementing legislation will provide how the first court is to be chosen. Initial terms "may be prescribed by law for less than eight years to provide maximum continuity." Thereafter terms will be for eight years.

In answer to your third question, the title of proposed Constitutional Amendment No. 6 does refer to "an auditor to be appointed as prescribed by law," while the body of the Amendment says "a legislative auditor shall be appointed as prescribed by law". As a practical matter, this makes no difference because by Chapter 287, Laws 1965, the office of legislative auditor was created. This same Act created a Legislative Audit Commission consisting of three members of the senate and four members of the house of representatives. It is this Commission which appoints the legislative auditor who holds office at the pleasure of the Commission. His salary is also to be set by the Commission.

The legislative auditor's duties are to be quite extensive and, briefly, shall consist of the following: (1) see that audits of the state, state agencies and local {*265} public bodies are conducted annually; (2) additional audits whenever the Commission directs; (3) establish rules and regulations; (4) approve private audit contracts for audits of state agencies and local public bodies; (5) examine such contract audits; (6) make written reports of all audits and examinations setting out any violations of law or violation of good accounting or managerial practices; (7) report violations to proper authorities; (8) notify surety if audit discloses a shortage; and (9) establish standards, including a uniform classification system of inventory items, and promulgate regulations concerning the system of inventory accounting for chattels and equipment. For the full text of his required duties, see Chapter 287, Laws 1965.

Your next inquiry concerns proposed Constitutional Amendment No. 7. You ask the significance of this Amendment. This Amendment, proposed by the Constitutional Revision Commission, seeks to repeal Section 5 of Article XIX. That section provides that Section 1 of Article XIX may only be changed by a constitutional convention. The reason for this proposed repeal is that Section 1 of Article XIX provides that "If two or more amendments are proposed, they shall be so submitted as to enable the electors to vote on each of them separately." At the next **general** election proposed Constitutional Amendment No. 9 will be voted on. This Amendment would amend Section 1 of Article XIX to provide that "a proposed amendment of an entire article of this constitution may be submitted to the electorate as a single amendment". In order to amend Section 1 of Article XIX in the manner just set out, it is necessary first to repeal Section 5 of Article XIX.

Your last question concerns proposed Constitutional Amendment No. 8. This Amendment provides that:

"In any appeal to the district court from the decision, act, or refusal to act, of any state executive in matters relating to water rights, the proceeding upon appeal shall be de novo."

The present statute on appeals from decisions of the State Engineer provides that the "proceeding upon appeal shall be de novo." Section 75-6-1, N.M.S.A., 1953 Compilation. However, in the case of *Kelley v. Carlsbad Irrigation District*, 71 N.M. 464, 379 P. 2d 763, our Supreme Court held that such a de novo provision violates the

constitutional separation of powers provision. Article III, Section 1, New Mexico Constitution. This is the reason for proposed Constitutional Amendment No. 8, which would permit one who is appealing from a decision of the State Engineer to present his evidence anew in the district court.