

**Opinion No. 68-67**

June 24, 1968

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Honorable Joe Angel District Judge Fourth Judicial District Las Vegas, New Mexico

**QUESTION**

**FACTS**

We have adopted the following facts from your letter.

"Recently the Town and City of Las Vegas approved consolidation of these two municipalities effective March of 1970. Article three of the Consolidation Procedure provides for a Joint Commission on Consolidation to be appointed by the respective mayors, which commission shall function as a legal entity under authority of the Joint Powers Agreements Act., Sections 4-22-1 to 7, N.M.S.A., 1953 Compilation, and whose purpose will be to effectuate the transition of the new government.

I have been appointed by the mayor of West Las Vegas to the commission, and I have been elected chairman by members of said commission subject to a legal determination that I can serve in such capacity."

**QUESTION**

Would my position on this commission be compatible with my office of District Judge?

**CONCLUSION**

Yes.

**OPINION**

**{\*111} ANALYSIS**

Article VI, Section 19, Constitution of New Mexico provides as follows:

"No judge of the Supreme or district courts shall be nominated or elected to any other than a judicial office in this state."

This is the only provision in our statutes or constitution that we have found that involves what other positions a district judge may hold. It is our opinion that serving on the commission set out in the fact would clearly not violate the quoted constitutional provision.

Further we see no conflict in the two positions under consideration that would cause them to be incompatible as defined in **Haymaker v. State**, 22 N.M. 400, 163 Pac. 248. The test of that case reads:

"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." (Citation omitted)

It is also our opinion that the possibility that some action of the commission might be before the courts of this state one day is not enough to make the positions incompatible. See Attorney General Opinion No. 4725 dated June 7, 1945. In that opinion we quoted the following pertinent language from **In re Opinion of the Justices**, 29 N.E. 2d 738 an opinion by the Supreme Court of Massachusetts.

"The office and the position are in no way related. It may be that it would be possible for a case to come before the Superior Court involving the action of such a board. But this possibility seems remote and the result would be merely the **disqualification of the judge to hear the case**. See *Edwards v. Cockburn*, 257 Mass. 153, 157, 153 N.E., 796. And an occasional disqualification of a judge to hear a case pending in the court of which he is a member does not preclude his continuing to hold the office, particularly where, as in the Superior Court \* \* \* there are other judges qualified to hear the case." (Emphasis ours.)

In view of all the foregoing it is our opinion that you may legally serve on the Joint Commission on Consolidation.

By: Roy G. Hill

Deputy Attorney General