

## Opinion No. 12-875

April 8, 1912

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Hon. Antonio Lucero, Secretary of State, Santa Fe, New Mexico.

### STATE OFFICERS.

State officer may be member of Board of Regents of a state institution and may receive compensation as such member.

### OPINION

{\*19} I have had on my desk for some time, your letter asking if there is anything in the constitution of the state or the laws now in force, to prohibit a state officer from holding any other officer, not in conflict with his, such as member of a board of regents of some institution, and from receiving pay therefor. I have been so occupied, that my answer to this question has been somewhat delayed, as I wished fully to satisfy myself before writing you.

There is nothing whatever in the constitution or statutes to prevent the holding of two offices by the same person, but this, of course, is subject to the general rule that no man shall hold two incompatible offices, where the duties of one would conflict or interfere with the discharge of the duties of the other. Therefore, I have no hesitation in saying that a state officer can be a member of a board of regents of a state institution, unless his official duties might bring him in conflict with that board.

As to the other part of your question, I have reached the conclusion that such a state officer may receive any compensation attached to the holding of another office. Your doubt must be based upon two clauses in the constitution, the first being the third paragraph of Section 12 of Article V, and the other being Section 9 of Article XX. The first of these is in the section fixing the compensation for state officers mentioned in Section 1 of the same article, and it declares that the compensation fixed shall be full payment for all services rendered by said officers, and that they shall receive no other fees or compensation whatsoever. I take this to mean that they shall receive no other compensation than the salary for services rendered by them as such officers. This view is supported by authorities, as will be seen quite satisfactorily by reference to the case of State v. Grant, 12 Wyo. 1, where the law is quite fully discussed with reference to other cases in other courts. The law is quite distinctly stated in the case of Evans v. City of Trenton in 24 N. J. Law, at pages 768 and 769. The New Jersey court says, in substance, that a public officer is not bound to perform all manner of public services without compensation because his office has a salary annexed to it, nor is he in consequence of holding an office, rendered legally incompetent to the discharge of duties which are clearly outside of the scope of his official duties, and that such extra

official duties might be performed as well by one person as another, as well by a private citizen as by a public officer, and therefore, for such services the officer might have compensation in addition to his salary.

The other constitutional provision referred to, is to the effect {<sup>20</sup>} that no officer of the state who receives a salary, shall receive any compensation "for or on account of his office," except the salary provided by law. The language here used makes even more definitely applicable the opinion above expressed as to the paragraph in Section 12 of Article V. You will notice that the forbidden compensation must be "for or on account of his office," and any compensation for services rendered as a member of a board of regents would certainly not be for or on account of his state office.