

Opinion No. 12-887

April 27, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. William C. McDonald, Governor of New Mexico, Santa Fe, N. M.

CONTINGENT FUND OF GOVERNOR.

As to how Governor's contingent fund may be expended.

OPINION

{*29} I have received your letter of even date herewith in which you say that you would like my opinion as to your right to use the contingent {*30} fund for entertainments of a public character not necessarily required by your office, and in which you also ask whether you have under the Constitution the right to use any money in any manner, in connection with your position as Governor of the State, other than salary.

Any doubt which you may have as to your authority to use funds other than salary, in connection with your position of Governor, must be referable to one of two provisions in the Constitution. The first of these is to be found in Section 12 of Article V, in which section the compensation to be paid to officers mentioned in Section One of the same article, is fixed, and those officers include the Governor with an annual compensation of five thousand dollars. This section further provides that the compensation therein fixed "shall be full payment for all services rendered by said officers and they shall receive no other fees or compensation whatsoever." I do not understand that this prohibition can have any possible application to your inquiries. It merely prohibits your receiving any fees or compensation for services rendered by you. To give the last clause any broader significance would lead to obvious absurdities, and would prevent your receiving any compensation from any source whatever for services rendered in some capacity other than that of Governor, such as, for instance, the director of a corporation, or even for the sale of property which you might own. What you ask, however, clearly does not relate to any compensation for your official services to which alone, as already stated, this prohibition must apply.

The other clause in the Constitution above referred to is to be found in Section 9 of Article XX, and it reads, as follows: "No officer of the State who receives a salary, shall accept or receive to his own use any compensation, fees, allowance or emoluments for or on account of his office, in any form whatever, except the salary provided by law."

The use of your contingent fund for entertainments of a public character may be considered as for or on account of your office, but in any just sense of the language used it cannot be said that that use of the fund is an acceptance or receiving by you of any money to your own use, as it would be no more than a mere reimbursement to you

of expenses imposed upon you by a sense of the obligations of the office which you hold. It is true that you are not compelled by law to give a public reception to all persons who may desire to meet the chief executive, or to give entertainments of any kind to members of the legislature or of the judiciary, or to receive as guests distinguished visitors who may come from abroad, such as officials of the United States, governors of other States, great lawyers, foreign diplomats, senators or members of the House of Representatives of the United States, but it is well known that in recent years many such persons have visited Santa Fe and have been guests of the Governors. If any Governor of New Mexico had not properly received and entertained such persons he would have been subject to just censure, and it was largely for the purpose of providing for such contingencies that the Legislative Assembly of the Territory has appropriated for many years the sum of three thousand dollars annually for the Governor's contingent expenses, and in at least three of the appropriation bills which cover the last seven years it has been distinctly {³¹} declared that this money should be payable upon the order of the Governor, indicating a legislative intent that it should be used by him as he in his discretion might deem proper. These statutory appropriations are in no way inconsistent with the Constitution as long as the Governor carefully draws the line between the use of this money for expenses in connection with his official position, as he may deem proper, and takes none of it to his own use by way of compensation to himself. When the makers of the Constitution gave the Governor a salary of only five thousand dollars, they must have had in mind this well-established, legislative policy of providing funds to enable the Governor properly to discharge the social obligations resting upon him as the chief executive, coupled with the expectation that this policy would be continued, because any reasonable man, conversant with such matters, must know that the salary would be quite inadequate for gubernatorial expenses and should be supplemented by additional appropriations.

What I have already said perhaps obviates the necessity of answering your questions as to your right to use any money other than salary, in any manner, in connection with your position as Governor, and I will merely add that there are many ways in which you can properly use public funds for public purposes, where you have any control of the funds. Unexpected and unforeseeable contingencies will continually arise where within the limits of a sound discretion a Governor ought to have use of public money for public purposes. As a concrete example, attention might be called to the recent case of alarming reports as to an epidemic outbreak of cerebro-spinal meningitis in the eastern part of the State when, in order to allay excited public feeling and to ascertain the fact if any epidemic did exist you authorized the employment of a physician of good standing and reputation to go to the places said to be affected and make a careful investigation of the alleged epidemic. I know of no funds specifically appropriated for such a purpose, or of any funds at your command, except the contingent fund to which your letter refers, and such use of that fund certainly is proper under the Constitution.