

Opinion No. 18-2095

April 8, 1918

BY: C. A. HATCH, Assistant Attorney General

TO: Honorable W. E. Lindsey, Governor of New Mexico, Santa Fe, New Mexico.

No Authority for Governor to Accept the Resignation of a Member of the Legislature.

OPINION

We have your favor of recent date asking our opinion as to whether or not you have authority under the law to accept the resignation of Mr. J. E. Pardue, as a member of the Legislature of the State of New Mexico, Mr. Pardue's letter being attached to your favor.

You are advised that because of the change of county lines, it is very doubtful as to whether or not Mr. Pardue is a member of the legislature at this time. It seems that when an officer is no longer a resident of the county or district from which he is elected, whether such change of residence is occasioned by voluntary removal, or by change of boundary lines, he ceases to be an officer of such county or district.

Under date of January 22nd, in an opinion written by Mr. Milton J. Helmick, Assistant Attorney General, a similar question was asked. In it Mr. Helmick states that a County Commissioner, who is no longer a resident of the district for which he was elected, by reason of the creation of a new county, is not qualified to act as a County Commissioner.

Without regard to the foregoing, we do not believe that the statutes give to the Executive the power to accept a resignation from a member of the House of Representatives. In an opinion given to the Honorable William C. McDonald, then Governor of New Mexico, Honorable Frank W. Clancy, former Attorney General, said relative to the power of the Governor to accept the resignation of a member of the legislature:

"I am unable to find that you have any authority or jurisdiction as to such a matter and I do not see how you can properly go beyond a mere acknowledgment of the receipt of the letter. I believe there is not a word to be found in the constitution or the statutes on the subject of the resignation of a member of the legislature except in Section 1669 of the Compiled Laws, which makes it the duty of the governor, if a vacancy should occur by death, resignation or otherwise, to issue a proclamation for a special election to fill the vacancy. This statutory provision is probably superseded by the last sentence of Section 4 of Article IV of the constitution which says, "Vacancies in either house shall be filled by an election at a time to be designated by the governor."

"I am unable to see how anything which you can do would in any way add to or take from the effect of Mr. Burg's act in announcing his resignation."

We think the foregoing is a correct statement of the law, and, therefore, you have no power to accept the resignation of Mr. Pardue in the present instance. In view of this opinion, you are advised that we do not see, how you can do more than acknowledge the receipt of Mr. Pardue's letter.