

Opinion No. 31-9

January 14, 1931

BY: E. K. Neumann, Attorney General

TO: Col. Osborne C. Wood, Adjutant General, Santa Fe, N. M.

{*22} This office, in response to your letter of January 12th, in which you {*23} inquire if the Chief Clerk and the Assistant United States Property and Disbursing Officer may receive additional or extra compensation for services as caretakers, such extra compensation being paid from the Armory, Repair and Upkeep funds.

In answer to this question it is assumed that the above named employees in your office are actually performing the duties required by caretakers of said Armory, Stables or Ranges.

The constitution of this State, by Article 20, section 9, provides that no officer of the State who receives a salary, shall accept and receive for his own use any compensation, fees, allowance and emoluments for or on account of his office in any form whatever, except the salary provided by law.

In our opinion this only applies to constitutional officers together with other state officers and it is apparent that the employees mentioned by you do not come within this classification, and, of course, would not fall within this constitutional inhibition.

By section 5 of Chapter 8 of the session laws of New Mexico of the 1929 session laws special session, it is provided that no additional compensation in way of salary shall be paid out of any funds herein appropriated for contingent expenses to any state official, assistant or employee, of such state officer whose salary is fixed by a specific appropriation herein.

This Act is a limitation upon a receipt of additional funds by those named in the Act upon the payment of such additional funds from funds appropriated for contingent expenses.

The provisions above cited, apparently do not control the situation which you have submitted to this office. Your appropriation of \$ 20,400.00 was made for the purpose set out in paragraph 8 in the 1929 Appropriation Act which is, Repair and Upkeep of Armory, Stables and Ranges, including rentals, paving, insurance and caretakers.

If therefore, as above stated the employees specified by you in your letter are actually performing the services as caretakers of either Armory, Stables or Ranges, then we find no legal objection to making payments to such employees as additional compensation from the Armory Repair and Upkeep funds.

By: Frank H. Patton,
Assistant Attorney General