

**Opinion No. 36-1352**

April 25, 1936

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. Juan N. Vigil, State Comptroller, Santa Fe, New Mexico.

{\*114} Your letter dated April 23, 1936, asking our opinion as to whether or not Dr. G. L. Herman should be paid for services rendered in the alleged capacity of District Health Officer during a period of from July 1 to July 15, 1935, is hereby acknowledged.

According to the State Board of Public Welfare, Dr. Herman was not at any time appointed to the office of District Health Officer by said Board. Chapter 131, Laws of 1935, Section 3, provides as follows:

"Each District Health Board shall appoint and employ one district health officer whose appointment and employment shall be subject to approval by the State Board of Public Welfare."

The question here presented would turn on the proposition of whether or not Dr. Herman could be considered a "de facto officer." It is certain he was not an "officer de jure." An "officer de facto" is one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law. See 46 C.J., Section 366. Three requisites are necessary to constitute one an "officer de facto"; (1) The office held by him must have a de jure existence, or at least one recognized by law; (2) he must be in actual possession thereof; and (3) his holding must be under color of title or authority. State vs. Blancett, 24 N.M. 433, 174 P. 207.

A mere claim to be a public officer and the exercise of the office will not constitute one an officer de facto. Chapter 131, Session Laws of 1935, expressly abolishes the office of County Health Officer as formerly provided by Section 110-312 of the 1929 Compilation.

It is stated in 46 C.J. at Page 1054 as follows:

"When a public office is abolished by duly constituted authority, the incumbent thereof ceases to be an officer."

In view of the foregoing it is our opinion that Dr. Herman not having been appointed to office as provided by the aforesaid Chapter 131, was acting as a mere volunteer and therefore is not entitled to the collection of any salary annexed to the office of District Health Officer for the reason that same is incident to the title of said office.

By EDWARD P. CHASE,

Asst. Atty. General