

Opinion No. 35-978

April 9, 1935

BY: FRANK H. PATTON, Attorney General

TO: Mr. James J. Connelly, Commissioner of Revenue, Santa Fe, New Mexico.

{*61} I have your letter of April 9th, wherein you request the opinion of this office as to whether you may legally allow payment from the Gasoline Tax Department to Mr. Dee H. Donnell for nine days services at \$ 15.00 per day in a total of \$ 135.00.

The legal phases of this question have been considered by this office a number of times in the past and in a number of instances we have held that a legislator could not accept employment with a department which was created during a session of which such legislator was a member, nor within one year thereafter.

In the present case Mr. Donnell was a member of the twelfth regular session of the legislature. That legislature enacted Chapter 9 which, briefly, created the Bureau of Revenue, provided for the appointment of a Commissioner of Revenue and transferred powers and duties of various officers and departments then in existence to the said Bureau of Revenue.

Among the powers and duties so transferred were those vested in the State Comptroller with respect to the collection, disposition and refunding of taxes upon gasoline and motor fuels.

It is understood that Mr. Donnell's employment was at the request of the Governor for the purpose of setting up the new Bureau of Revenue and you further state in your letter that Mr. Donnell has assisted in this work, but has not been employed directly against the Gasoline Tax Department, but in line with services rendered against the Commissioner of Revenue Administration Account.

We understand further, however, that most of Mr. Donnell's work has been in connection with duties involving the Gasoline Tax Department, which work was created at a prior session and that Mr. Donnell was not a member of said session.

Be this as it may, the fact remains that Mr. Donnell was working for the Bureau of Revenue, a department created by the legislature of which he was a member, and I am inclined to continue my original assumption that he is disqualified to perform any services for this department.

It is my belief that you should refuse to approve the vouchers for payment of these services and in that event Mr. Donnell may file a mandamus proceeding against you and the matter can be decided by the courts.

I am convinced that I am right in my position and I see no reason to change my present viewpoint until the Supreme Court of this state decides that I am wrong.