

Opinion No. 39-3098

April 14, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mrs. Carmen R. Dyche, 1618 East Coal Avenue, Albuquerque, New Mexico.

{*34} As a member of the House of Representatives you have requested an interpretation of Section 37 of Article IV of the State Constitution as to whether the wife of a regular employee of the railroad company is included within the prohibition. The provision reads as follows:

"It shall not be lawful for a member of the legislature to use a pass, or to purchase or receive transportation over any railroad upon terms not open to the general public; and for violation of this section shall work a forfeiture of the office."

Under date of May 31st, 1933, in opinion 603 addressed to Mr. J. W. Tackett, Albuquerque, New Mexico, as a member of the State Senate, this office held that the constitutional provision was adopted for the primary purpose of eliminating graft upon the part of members of the legislature and to relieve said members of any feeling of obligation toward a railroad company by virtue of possession of a free pass.

It is further stated in the opinion that this office doubted if cases where railroad employees became members of the legislature were within the purview of this provision since such employee-member would have to surrender his annual transportation or other pass, which he had earned because of service for the railroad company.

You further state in your letter that your husband has been an employee of the A.T. & S.F. railroad for approximately eighteen years and that you have been entitled to and have used a pass for that length of time, said pass having been issued to Mr. and Mrs. Robert F. Dyche.

You also state that you are a Grand Lodge Officer of the Ladies Society to the Brotherhood of Locomotive Firemen and Enginemen, and have been such for the last eight years.

I do not believe that we should interpret the phraseology of this particular section of the Constitution literally, since I am of the opinion that such is not the intention of the Constitution and will, therefore, hold that the prohibition does not apply to bona fide employees of the railroad company or their wives.