

**Opinion No. 39-3196**

June 27, 1939

**BY:** FILO M. SEDILLO, Attorney General

**TO:** Honorable John E. Miles, Governor of New Mexico, Santa Fe, New Mexico.

{\*73} Your letter of June 23rd calls for an opinion upon the question of whether a County Commissioner may also hold a position with the state administration.

There is nothing in our statutes prohibiting a County Commissioner holding a position with the state administration.

Subsection 8 of Section 96-107, 1929 Code, provides that a county, precinct, district, city, town, or municipal office becomes vacant when an officer accepts or undertakes to discharge the duties of an incompatible office.

In *Haymaker v. State, ex rel McCain*, 22 N.M. 400, the Supreme Court defines incompatibility as follows:

"Incompatibility between offices is an inconsistency between the functions thereof, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially {\*74} discharge the duties of both."

Whether or not it would be incompatible for a County Commissioner to hold a position with the state administration depends on the position itself. There are some state positions whose functions would be inconsistent with those of a County Commissioner, thus making the two positions incompatible.