

**Opinion No. 40-3532**

May 23, 1940

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

**TO:** Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico:

{\*146} In your letter of May 22nd you say that the City of Portales has made an inquiry as to whether or not the mayor of the city may be appointed chief of police, and whether these two positions are compatible.

The term incompatibility has been defined in *Haymaker v. State*, 22 N.M. 400, 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 discharge the duties of both. Held that office of member of city board of education and clerk thereof are incompatible."

Under Section 90-607 of the New Mexico Statutes Annotated, 1929 Compilation, as amended by Chapter 84 of the Session Laws of 1931, the mayor shall have full power to nominate all appointive officers and if the person so nominated shall receive the majority of the votes of the city council, then they shall hold office for the term for which they were appointed. The appointive officers of cities are a city marshal, members of police, a city attorney, and such other officers as may be by ordinance provided for.

In view of this section and the foregoing definition of incompatibility as defined in *Haymaker v. State*, it is my opinion that the offices of Chief of Police and Mayor of a city are incompatible and therefore the procedure mentioned by the City of Clayton to you should not be permitted.