

Opinion No. 41-3768

April 21, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. M. F. Apodaca, Sheriff Dona Ana County Las Cruces, New Mexico

{*60} At the request of your district attorney, M. A. Threet, we are happy to answer your letter dated April 8, 1941, in which you ask for an opinion by this office as to whether or not a duly elected constable may also serve as deputy sheriff.

Section 33-4421, New Mexico Statutes, Annotated, 1929 Compilation, provides:

"It shall not be lawful for any sheriff or deputy sheriff to attend the session of the court of any justice of the peace, unless the constable of the precinct be sick, absent or otherwise unable to attend, and whenever such sheriff or deputy sheriff shall attend any such court in the case permitted in this section, he shall receive only the fees and allowances which are allowed by law to constables in such cases; and for all cases of services performed by any sheriff or deputy sheriff, in the service of process of justice of the peace, the fees shall be the same as are allowed by law to constables."

This section is the only section in our laws which deals with the problem of whether or not a constable may act as a deputy sheriff or whether a deputy sheriff may act as constable. It seems to me that this statute does not prevent the duly elected constable from acting as deputy sheriff.

{*61} Your problem does not come within the same class as those where an attempt is made to appoint a justice of the peace to the position of deputy sheriff. The positions in that class are clearly incompatible, one being judicial and the other being executive.

In my opinion, since a constable and a deputy sheriff are both law enforcement officers, so long as multiple compensation is not sought or obtained for the performance of the same service, a duly elected constable may be appointed deputy sheriff.

Trusting that the foregoing sufficiently answers your inquiry, I am,

By GEO. H. HUNKER, Jr.

Asst. Atty. General