

Opinion No. 41-3936

October 29, 1941

BY: EDWARD P. CHASE, Attorney General

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

{*118} This will acknowledge receipt of your letter dated October 25, 1941, in which you request an opinion from this office relative to the compatibility of the office of County Assessor with that of transporter of school pupils (bus driver).

Under Section 96-107 of the 1929 Compilation, if the two positions or offices are incompatible and the assessor should enter into a contract for the transportation of school children, then the office of assessor would become vacant. However, in considering the question of incompatibility, it is generally stated that such a condition does not arise when one of the positions is an office and the other is merely an employment. 46 C. J. Section 46, Page 943.

Our Supreme Court, in the case of *Maymaker v. State* 22 N.M. 400, 163 P. 248, we find incompatibility between offices as follows:

"The incompatibility between two offices which upon the acceptance of the one by the incumbent of the other operates to vacate the latter, is not simply a physical impossibility to discharge the duties of both offices at the same time, but it is an inconsistency in the functions of the two offices, 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."

Since the person contracting to transport school children is merely an employee of the Board of Education, and since under the decision of the Supreme Court there is no inconsistency in the functions of the two offices, it is my opinion that a county assessor may legally contract to transport pupils, and that such employment {*119} is not incompatible with his duties as a county officer.