

## Opinion No. 42-4031

February 25, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. J. Benson Newell Republican State Chairman Las Cruces, New Mexico

{\*163} This will acknowledge receipt of a copy of your letter dated February 25, 1942, signed as State Chairman of the Republican Party. Apparently, the original has been mailed here in Santa Fe, but I have not, as yet, received same. This copy was handed to me by the Press for my comments.

I regret that you delivered a copy of this letter to the Press before the original was received by me, which might indicate that the letter was written primarily for publicity purposes. Because of the importance of the questions raised in your letter, and my duty to the public, I, therefore, answer your letter.

You raise three questions and request that I, as Attorney General, proceed to take some action relative thereto or advise you that no action will be taken in order that you may take such action as may be deemed advisable and appropriate by you.

The questions raised are as follows:

"First, the case of Corporation Commissioner, Henry Eager, which has had quite a bit of publicity. We are of the opinion that Sec. 3 of Art II of our State Constitution applies directly to this case.

"Second; The constitutionality of Chap. 188, Laws of 1941 under which we are advised the State has paid large sums of money for the group insurance of various employees in many of the state departments. We are of the opinion that this statute contravenes the provisions of Sec. 30 of Art. 4 of the state constitution prohibiting the expenditures of state money except under definite appropriations which must specify the sum appropriated and the object to which it is to be applied.

"Third: The law enacted by the 1941 Legislature providing for 'compensation of \$ 2000 per year . . .' for each of the Supreme Court Justices as library trustees."

Relative to the first question, this office has heretofore rendered an opinion, No. 4014, dated February 7, 1942, which fully covers the subject. We are enclosing a copy of this opinion herewith for your information.

We have also done considerable research relative to the procedure to be followed in removal proceedings and have come to the conclusion that the removal of any state constitutional officer may legally be accomplished only by means of impeachment.

Relative to your second question, {*\*164*} this office has heretofore rendered Opinions No. 3836 and 3910, holding that the group insurance plan does not violate the Constitution. Copies of these opinions are being enclosed herewith for your information.

Your third question raises an issue upon which this office has not officially rendered an opinion.

As you no doubt know, district judges have for many years past received additional compensation by virtue of being designated as juvenile court judges, and in recent years district attorneys, likewise, have been given additional compensation by the Legislature as remuneration for acting as juvenile court attorneys. Apparently, the constitutionality of this additional compensation to district judges and district attorneys, which was authorized some twenty years ago as to district judges, has never been questioned or, at least, has not been passed upon by the Supreme Court.

Before the bill, to which you refer, was introduced in the 1941 Legislature, it is my understanding that several able and distinguished members of the New Mexico Bar gave the question thorough study, and the respective members of the Judiciary Committees in each House of the Legislature, Democrats and Republicans, likewise satisfied themselves relative to the legality and constitutionality of this law. Each of the district judges, Republicans and Democrats alike, have performed the additional services imposed upon them as judges of the juvenile court for over twenty years, and have accepted the compensation provided for such additional services. Incidentally, it was a legislature, predominantly Republican, which passed this act, though it likewise had the support of the Democratic minority. Likewise, each of the Justices of the Supreme Court have entered upon the duties imposed upon them by the Legislature and are accepting compensation therefor, and it occurs to me that said judges and justices would have not so acted had there been any doubt in their minds as to the constitutionality of the law.

Although this law is comparatively recent in New Mexico, the principle has been followed in other states. Your attention is particularly called to statutes of Montana and Missouri.