

Opinion No. 43-4211

January 13, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. John G. Montgomery, Member, House of Representatives, Santa Fe, New Mexico

You have handed me a letter from R. P. Johnson, who was elected at the last election as a representative from the 16th District, who is now working in California, and states that he is unable to obtain a leave of absence from his employer in order to attend and qualify in this session of the legislature. You request an opinion from this office relative to the right of the former member of the legislature from that district to hold over and serve in the present term of the legislature.

Article 20, Section 2 of the Constitution provides as follows:

"Every officer, unless removed, shall hold his office until his successor has duly qualified."

This general constitutional provision covers every public officer, and if a member of the legislature is a public officer, then the incumbent would hold over until his successor qualifies.

There seems to be no question but what members of the legislature are public officers, and they have been so held in the following cases:

People v. Ridgley, 21 Ill. 77;

State v. Dammann, 228 N. W. 573, 201 Wis. 84;

State v. Yelle, 110 P. (2d) 162, 7 Wash. (2d) 1443.

Trusting that this satisfactorily answers your question, I am,

By C. C. McCULLOH,

First Asst. Atty. General