

Opinion No. 43-4256

March 23, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Cecilia Tafoya Cleveland, Secretary of State, Santa Fe, New Mexico

We are in receipt of your letter of March 16, 1943, in which you state that the Governor appointed you Custodian of the building known as the Public Welfare Building located on Galisteo Street across from the State Capitol, which consists of 30 offices. In the light of these facts you ask the following questions:

"Does this building come under the supervision of the Capitol Custodian?"

"If it does not come under the control of the Capitol Custodian, and if such duties are imposed on me, may I receive a separate salary for such supervision?"

The answer to your first question depends on the meaning of Section 6-207 of the 1941 Compilation which is, in part, as follows:

"Section 3. Said Capitol Custodian, under the direction and supervision of the Governor and Secretary of State, shall have the custody and control of the State Capitol grounds and buildings and premises **which heretofore has been under** the control of the Capitol Custodian Committee."

In order to determine what buildings are under the control of the Capitol Custodian Commission, it is necessary to refer to Section 134-1203 of the 1929 Compilation, which provides in part as follows:

"Said Capitol Custodian Committee shall have the care and custody and control of the Capitol Building and grounds and the premises connected therewith."

Thus, it would appear that since the Capitol Custodian Committee, prior to the enactment of Chapter 135 of the Laws of 1935 above cited as Section 6-207 of the 1941 Compilation, had control only over the Capitol Building and grounds and premises connected therewith, and that the Capitol Custodian does not have control over the Welfare Building, since it is not a part of the Capitol Building, grounds or premises connected therewith, unless Section 6-210 of the 1941 Comlation, enacted as Section 6 of Chapter 135 of the Laws of 1935, be construed to include this building. This section is as follows:

"All property, real or personal, the title to which may be acquired by the state in pursuit of the **foregoing objects**, is hereby committed to the care, custody and control of the Capitol Custodian."

However, it appears to me that this section would not be construed as extending the power of the Capitol Custodian over a building separate from the Capitol for the following reasons:

First, it refers to property which may be acquired by the state in pursuit of the foregoing objects. Nowhere in Chapter 135 of the Laws of 1935 are there any provisions made for the acquisition of property, and thus there can be no property acquired for the foregoing objects. However, this is the identical language used in Section 134-1207 of the 1929 Compilation, being Section 2, Chapter 15 of the Laws of 1929 which, undoubtedly refers back to Section 1, Chapter 15 of the Laws of 1929, which provides for the development of land along the Santa Fe River, and is compiled as Section 6-213 of the 1941 Compilation. It is thus apparent that Section 6-210 of the 1941 Compilation refers only to the objects set forth in Section 6-213 of such compilation. Further, in Section 5, provision is made for the payroll for employees "in and about said Capitol Building and grounds."

Lastly, it is noted that by Section 6-208, the duty of the care of the Governor's Mansion is placed specifically on the Capitol Custodian and by Section 25, Chapter 14 of the Laws of 1934, the Supreme Court Building, defined therein as the Capitol Addition Building, is placed in the custody of a separate committee. It thus appears that the Legislature did not intend to place the custody of anything other than the Capitol Building in the control of the Capitol Custodian, by Section 6-207 of the 1941 Compilation.

In view of the foregoing, my answer to your Question No. 1 is "No."

Since it is my opinion that the care and custody of the Welfare Building is not imposed upon the Capitol Custodian, it necessarily follows that the supervision of such Custodian is not imposed upon the Secretary of State, by virtue of Section 6-201. Thus, if the duty of caring for this building is imposed upon you, in my opinion it would not be unconstitutional for you to be allowed a separate salary for this position under the same theory that the Supreme Court Justices receive their salaries as trustees of the library. The theory, of course, is that while a State Officer cannot have his compensation raised during his term of office for doing the duties for which he was elected he can receive a separate salary for separate duties not among those imposed at the time he was elected. In this connection, I enclose a copy of Opinion No. 4031, the third question of which deals with the salaries received by the Supreme Court Justices as library trustees.

ROBERT W. WARD,

Asst. Atty. General