

Opinion No. 42-4054

March 23, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. W. J. Evans, Mayor Deming, New Mexico

{*173} In your letter dated March 21, 1942, you inquire whether the Board of Trustees of a village may employ one of the members of the board as City Manager and pay him a salary.

Section 90-3506, New Mexico Statutes Annotated, 1929 Compilation, provides as follows:

"That the board of trustees of any incorporated village shall have power to provide by ordinance for the election of a treasurer, a village marshal and such other officers as they may deem necessary for the good government of the corporation; to prescribe their duties where the same are not defined by law, and the compensation or fees they shall be entitled to receive for their services and to require of them an oath of office and a bond with surety for the faithful discharge of the duties of their respective offices. The election of such officers shall be at the regular election for village officers. The board of trustees is empowered to appoint such officers until the next election and to likewise fill vacancies therein."

Under the authority granted to the board of trustees to provide for the election of other officers by ordinance, I am of the opinion that the office of village manager could be created and could become an elective office by virtue of an ordinance. However, if such an office is created, one person could not hold the office of member of the board of trustees and also the office of village manager, for the reason that the two offices would be incompatible. In the case of *Haymaker vs. State*, 22 N.M. 400, the Supreme Court held that the office of member of a city board of education and of clerk thereof are incompatible, and in defining incompatibility between the two offices, the court quoted with approval this language:

"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."

Regardless of the fact that an office of village manager might be created, still the board of trustees would have the power to appoint such officer until the next election, and also to make an appointment to fill a vacancy that might be created in the future.

In view of the fact that the functions of the two offices would be inconsistent and incompatible, I am forced to answer your question in the negative.