

No. 395

MONTANA SCHOOL OF MINES, president of may be member of merit system council—MERIT SYSTEM COUNCIL, School of Mines President may be member of—OFFICES AND OFFICERS

Held: The President of the Montana School of Mines may serve as a member of the Joint Merit System Council and be paid the usual per diem therefor.

April 11, 1942.

Mr. Melvin P. Martinson
Supervisor
Joint Merit System Council
Helena, Montana

Dear Mr. Martinson:

You have asked this office whether there is any objection to the President of the Montana School of Mines being a member of the Joint Merit System Council and receiving a per diem remuneration therefor.

The Attorney General's office has formerly held teachers and members of the staffs of the University of Montana and its several units are not "state officers." (Vol. 15, Opinions of the Attorney General, p. 226.) Whether the holding of the position of member of the Joint Merit System Council is a public office or merely employment is at least doubtful; but it is a general rule, in the absence of constitutional or statutory prohibition, one man may hold two or more state offices at the same time. (59 C. J. 124).

Public policy or incompatibility of offices sometimes renders a person ineligible for employment in two governmental capacities. There seems to be no such incompatibility or public policy involved in the capacities about which you inquire. I find no constitutional or statutory provision which would prevent compensation being paid to a person rendering service to the state under two capacities as long as one employment does not interfere with the other.

There are specific provisions of the State Constitution which definitely state the statutory compensation of officers is to be payment "in full for all services by said officers respectively rendered in any official capacity or employment whatever during their respective terms of office" as, for example, Section 4 of Article VII of the State Constitution relating to state executive officers. As stated, there is no constitutional or statutory provision governing the situation outlined in your letter.

It is my opinion the President of the Montana School of Mines may serve as a member of the Joint Merit System Council and be paid the usual per diem therefor.

Sincerely yours,

JOHN W. BONNER
Attorney General