4 October 1946

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ARIZONA ATTORNEY GENERAL

Honorable Dan E. Garvey,
Secretary of State
Capitol Building
Phoenix, Arizona.

Dear Mr. Garvey:

This will acknowledge receipt of your letter of 2 October 1946, in which you inquire as to the legality of your hiring state employees after office hours to assist you in preparing and mailing publicity pamphlets in connection with the special election called by the Third Special Session of the Seventeenth Legislature.

Section 17, part 2, Article 4 of the Constitution of Arizona reads:

> "(Extra compensation)-- The legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor after the services shall have been rendered or the contract entered into, nor shall the compensation of any public officer be increased or diminished during his term of office, provided, however, that when any legislative increase or decrease in the compensation of the members of any court, board, or commission, composed of two or more officers or persons, whose respective terms of office are not coterminous, has heretofore or shall hereafter become effective as to any member of such court, board, or commission, it shall be effective from such date as to each of the members thereof".

This provision has been held not to apply to public officers who have no fixed or definite term of office, but who hold at the will of the appointing power.---State v. Frohmiller, 46 Ariz. 413; 52 P. 2d 483. Nor does it apply to an "employee" as distinguished from an "officer".--- Coleman v. Lee, 58 Ariz. 506; 121 P. 2d 433.

The statutory limitation on compensation is contained in Section 12-709, A.C.A.1939, which provides as follows:

> "Legal salary only to be received and in full, payable semi-monthly.-- The salaries provided in this chapter shall be in full compensation for all services rendered by any officer, deputy or assistant. Salaries shall be paid

> twice in each month on regular days not more than sixteen (16) days apart. All state or county officers, employees, members of boards and commissions not mentioned in this chapter and all deputies, stenographers, clerks and employees of any officer, board or commission, or of any institution, shall receive the salary provided by the laws creating or authorizing their respective positions, and shall not, under any pretext, receive any salary or emoluments in excess of the salary so provided by law".

This section has been construed as not being applicable to an "employee" where the law creating the position "does not provide for his salary in terms nor by reference to any other statute".-- Coleman v. Lee, supra.

The only restriction at common law on an officer in the matter of accepting and performing duties other than those of his office is that such duties be not incompatible with the duties of his office.-- Coleman v. Lee, supra. This rule would seem to be even more liberal in its application to an "employee" who is not as restricted in his activities as is a "public officer".

It is the opinion of this office that there is no prohibition against your hiring and paying state "employees" to perform the contemplated work, so long as the same does not interfere with their regular duties.

Very truly yours,

JOHN L. SULLIVAN
Attorney General

JOHN W. ROOD
Chief Assistant Attorney General

BURR SUTTER
Assistant Attorney General