

Opinion No. 47-4993

March 1, 1947

BY: C. C. McCULLOH, Attorney General

TO: Raymond Huff, Chairman State Board for Vocational Education Santa Fe, New Mexico

{*17} We are in receipt of your letter of February 25, in which you state that for many years it has been the practice of the State Board of Vocational Education to pay the Superintendent of Public Instruction a salary of \$ 1,200.00 a year for acting as Executive Secretary of the State Board of Vocational Education. You state that the State Board of Vocational Education receives its funds from the Federal Government and its duties consist of administering educational matters involving Federal moneys. You also state that the State Board of Education, when handling such matters, always adjourns as a State Board and then convenes as a State Board of Vocational Education. In view of the foregoing you ask our opinion as to whether you may legally pay a salary to the Superintendent of Public Instruction for acting as Executive Secretary of the State Board of Vocational Education.

From your letter it seems clear that the Executive Secretary of the State Board of Vocational Education is a separate and distinct office from the office of State Superintendent of Public Instruction; that the duties pertaining to such office are duties separate from the duties imposed on the State Superintendent of Public Instruction, and that the situation is much the same as that which exists with members of the Supreme Court when acting as Library trustees; district judges and district attorneys when acting as juvenile judges and juvenile attorneys, and the State Treasurer when acting as Treasurer of the Unemployment Compensation Commission.

In the past, this office has taken the position that as the additional salary in each of the above cases is paid for a separate office, even though occupied by the same individual, that the same could be legally paid. You will find enclosed copy of Opinion No. 4293, dealing with this question. The basis of these opinions is shown by the following quotations from 43 Am. Jur. 151:

"The law does not, of course, forbid extra compensation for extra services which have no affinity or connection with the duties of the office. Where the duties newly imposed upon the officer are not merely incidents of and germane to the office, but embrace a new field, and are beyond the scope and range {*18} of the office as it theretofore existed and functioned, the incumbent may be awarded extra compensation for the performance of such duties without violating a constitutional inhibition against increase of salary during the term."

In view of the foregoing, it is my opinion that you may legally pay the State Superintendent of Public Instruction a separate salary for acting as Executive Secretary of the State Board of Vocational Education.

By ROBERT W. WARD,

Asst. Atty. General