

Opinion No. 47-5002

March 25, 1947

BY: C. C. McCULLOH, Attorney General

TO: Benjamin D. Luchini Chairman-Executive Director Employment Security
Commission 111 S. Sixth Street Albuquerque, New Mexico

{*24} This will acknowledge receipt of your letter of March 19, 1947. in which you request the opinion of this office as to the meaning of the phrase "examination papers", as contained in regulations adopted by the Employment Security Commission of New Mexico, which provide that "in selecting persons from among those certified, the appointing authority shall be permitted to examine their applications, **examination papers** and reports of investigations, and to interview them."

The Social Security Act (Title 42, Section 503, U.S.C.A.) provides that no payments will be made to the state unless the state law makes provision for "such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis * * *) * *".

{*25} Section 57-811 (d), New Mexico Statutes, 1941 Compilation, provides in part as follows:

"* * * The commission is authorized and directed to provide for a merit system covering all persons employed in the administration of this act and shall have authority, by regulation, to provide for all matters which are appropriate to the establishment and maintenance of such system on the basis of efficiency and fitness. * * * The Commission is authorized to adopt such regulations as may be necessary to meet personal (personnel) standard(s) promulgated by the social security board pursuant to the Social Security Act, as amended (42 U.S.C., Sec. 301 et seq.), and the so-called Wagner-Peyser Act (48 Stat. 113, U. S. C. A. title 29, Section 49 (c)), and to provide for the maintenance of the merit system established under this section in conjunction with any merit system for any other state agency or agencies which meets the personnel standards promulgated by the social security board."

I do not have the information available, but you state in your letter that both the provisions of the state law and the regulations adopted by the Employment Security Commission have been approved by the Social Security Administration and by the Treasury Department.

It appears to me that since the Legislature gave the Employment Security Commission of New Mexico authority to draw up regulations with reference to establishing a merit system and for appointment thereunder, that the Commission could, in its discretion, set up reasonable regulations pertaining thereto, including one which would permit the appointing authority to inspect "examination papers".

In view of the express language of the regulation made by the Employment Security Commission and in the light of the meaning given the word "papers" by the courts generally (see Words and Phrases) I believe that a court would construe "examination papers" as including the papers on which the applicant took the examination, together with the question and answer sheets.

By WM. R. FEDERICI,

Asst. Atty. General