

Opinion No. 47-5063

August 11, 1947

BY: C. C. McCULLOH, Attorney General

TO: Hon. H. W. Beasley, Chief, New Mexico State Police. Santa Fe, New Mexico.

{*77} In your letter dated August 8, 1947 you state that one of the State Police officers wishes to participate in the State Employees Retirement Plan, and you are wondering, since the State Police already have a Pension Retirement Law, whether that would exclude participation by members of the State Police under the 1947 Law.

It is true that under Section 40-401 of the 1941 Compilation, the Board of Supervisors of the State Police is authorized to create and establish a pension fund. and also an insurance fund, for the benefit of members of the force.

I understand from your letter that no pension plan is in force, and, even if such were in force, I do not believe the same would bar State Policemen from participating under the provisions of Chapter 167, Laws of 1947.

Section 1, Subsection 2 of this Law defines "Public Employee" to mean, "any person holding a state, municipal, city or county office in any capacity whatever, whose salary is paid by warrant of the State from the fees or income of any department, board, bureau or agency of the State, * * * excepting professors and instructors and employees in the educational institutions within the state which have an established retirement plan for such employees."

Since this definition of "Public Employee" is broad enough to include members of the State Police, I see no reason why they cannot participate in the Employees Retirement Plan.