

Opinion No. 52-5573

August 12, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Guy Shepard State Land Commissioner Santa Fe, New Mexico

{*281} Recently you inquired of this office whether the "freeze" on all salaries in the Executive Departments of the New Mexico State Government applied to the State Land Office. The inquiry was based upon the proposition that the State Land Office is an Executive Department and further inquiry was raised as to whether you have discretion to fix salaries and assign duties of the employees of that office. Subsequently this was expanded to embrace the matter of your discretion in fixing the number of employees to work in that department.

Article V, Section 1 of the Constitution makes the Commissioner of Public Lands a member of the Executive Department. Chapter 8-101 NMSA, et seq., creates the State Land Office and makes the Commissioner of Public Lands its executive head. It would appear, therefore, that the State Land Office would be classified as an Executive Department. The Commissioner of Public Lands, by the Constitution, is not given unfettered discretion in the administration of public lands. The Constitution defines his duties -- Art. 13, Sec. 2. From this it appears that he is subject to such regulations as may be provided by law. To the extent that laws are enacted limiting the Land Commissioner such laws would not offend the constitutional powers of the Land Commissioner.

Chapter 8-101, et seq., NMSA, contains laws limiting the powers of the Land Commissioner in connection with the State Land Office. The Legislature has authority to pass such laws. In default of any such legislation the Commissioner of {*282} Public Lands has authority to define the duties of his employees. As a matter of fact Ch. 8-108 NMSA, by statute, gives him this power. Consequently, in answer to part of your question, may I state that it is within your discretion to assign the duties of the employees of the State Land Office except to the extent that specific duties are imposed upon specific employees as provided by the Legislature and as set out in the statutes.

For the purpose of considering the inquiry, may I now address myself to that part of your inquiry concerning the right to determine the number of employees to be hired by the State Land Office. In default of any legislation enacted, within the framework of the budget for the Land Office, you as Executive Head of the State Land Office have the power to determine the number of employees required for the administration of the functions of that department.

It is to be noted, however, that while Chapter 8, Sections 109 and 110, provides for a maintenance fund for the payment of salaries and expenses of the State Land Office

from that fund, the State Land Office is subject to the General Appropriations Act of 1951 and certain statutory provisions.

Therefore your attention is called to 7-401 NMSA, which requires all state offices, departments, etc., to submit an annual budget for each ensuing fiscal year to the Board of Finance and which prohibits any expenditures until such budget is approved by the Board of Finance. To the extent that such budget limits the number of employees and salaries for such employees, your power to determine the number of employees and salaries to be paid them is subject to such legislation.

The power to determine salaries is also circumscribed by 10-401 NMSA which confers the power upon the Governor, subject to the approval of the State Board of Finance, to classify employees within the Executive Departments and to fix salaries within such classifications.

The matter of expenditures is also subject to Sec. 11 of the General Appropriations Act of 1951, which has no specific application to salaries or to the number of employees.

To summarize, therefore, may I state that to the extent that the number of employees and salaries to be paid them is controlled by 7-401 NMSA, you have power to determine the number of employees and salaries to be paid, subject, as to salaries, to the further provisions of 10-401, providing for a classification of employees and subject to the overall controlling provisions of Sec. 11 of the General Appropriations Act.

If there has been no proper classification of employees within the Executive Departments as required by 10-401 that statute is of no consequence so far as this opinion is concerned and the only provision of law affecting your power to fix salaries and the number of employees exists by virtue of 7-401 and Sec. 11 of the General Appropriations Act.

While your inquiry does not raise the question whether approval of a budget by the State Board of Finance circumscribes your power to fix the number of employees and the salaries to be paid them, to expedite a disposition of this problem, may I state that it is my opinion that the State Board of Finance as a State Agency, created by the Legislature, possesses only such authority as is delegated to it by the Legislature.

It is my opinion that 7-401 in default of any legislative pronouncement that approval of a budget by the Board of Finance restricts the head of a department to the number of employees tentatively shown in the budget or the salaries to be paid them, no such restriction may be read into the approval of the budget, and it is my opinion, therefore, that approval of a budget by the State Board of Finance restricts the head of a department to expenditures {283} as classified in the budget within general limitations only. It does not preclude the head of a department from determining the number of employees the department requires or the salaries to be paid such employees provided the overall salaries paid stay within the total salaries appropriation as approved.

I trust this fully answers your inquiry.