

Opinion No. 52-5589

September 11, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Robert D. Castner State Auditor State Capitol Building Santa Fe, New Mexico

{*296} You have asked for an opinion as to whether you should honor a purchase voucher in payment for services performed in establishing a personnel procedure plan by an organization known as the Public Administration Service under a contract with the State Highway Commission. You question the authority of the Commission to enter into such a contract in view of Sections 10-401 through 10-404 N.M.S.A., 1941 (Supplement).

These sections of the law authorize the Governor, subject to the approval of the State Board of Finance, to classify employees within the Executive Department and to equalize and limit their salaries and to make as uniform as practical their hours of labor. Section 10-403 thereof also authorizes the "transfer, temporarily from one office, department or institution, to another office, department or institution such employees as in his judgment may be necessary or convenient at any time to further the economical and efficient conduct of the State government and without regard to the appropriation out of which such employee may be paid."

These sections were originally Chapter 70 of the New Mexico Session Laws of 1935 and were amended to empower the Governor to designate and employ a personnel directory by Chapter 10 of the Session Laws of 1943. So far as we know, no action has been taken until very recently to exercise the power conferred by these laws, see Attorney General Opinion No. 5573, 12 August, 1952, and no action had been taken under them on July 27, 1951, the date of the contract between the Public Administration Service and the State Highway Commission.

On the date of the execution of this contract, however, an amendment to the Constitution of New Mexico was in force which had established a permanent Highway Commission, charged it with the duty of determining matters of policy relating to public highways, placed it in "charge of all matters pertaining to highway employees," and directed it to "appoint a Chief Highway Engineer, who shall be Chief Administrator of the Highway Commission and shall have charge of the hiring and firing of employees of the Highway Commission, subject to the control and supervision of the Highway Commission," Article V, Section 14, Constitution of {*297} New Mexico, 41 N.M. S. A. (Supplement).

It was the commission established by this amendment which entered into this contract. If the Commission has charge of all matters pertaining to highway employees, it would seem not only reasonable, but good business practice, for it to employ the services of an expert to assist it in a personnel procedure plan.

The Constitution is the supreme law of the State, but any part of it should be interpreted harmoniously with the other parts. The question is, therefore, are there any other provisions of the Constitution upon which Sections 10-401 to 10-404 might be based which limit or restrict this power given to the Commission by the Constitution, or are Sections 10-401 to 10-404 so inconsistent with the amendment pertaining to the control of the Highway Commission over its employees that these sections must be held inapplicable to the Highway Commission.

The provisions of Article V, Section 14 of the Constitution were discussed in Attorney General No. 5588. There it was concluded that the Commission having been given complete charge of all matters pertaining to the expenditure of its funds, neither the Board of Finance nor the Governor could exercise any control over the expenditure of highway funds. We have found nothing in the Constitution which is inconsistent with or tends to limit or restrict the wording of Article V, Section 14, with reference to the control by the Commission over its employees, except perhaps those general provisions which would affect all public employees and would include the Governor's right to call out the militia Article V, Section 4, Child Labor Laws based on Article XX, Section 10, etc. Those laws based upon police powers and health and safety factors pertaining to all employees, generally, might also be held to be applicable to highway employees. As stated in our former opinion, besides construing the amendment harmoniously with the rest of the Constitution, it cannot be said to have repealed all statutes dealing directly or indirectly with the powers or functions of the Highway Department. Although generally it may be said that laws inconsistent with it are superseded, each case must stand upon its own merits and the particular conditions, and each statute must be separately construed.

Sections 10-401 to 10-404, however, are not this type of legislation. These sections would make the Governor or the Board of Finance the employer rather than the Commission.

"One of the tests of the relation of the employer and the employee is that the employer retains the right to direct the manner in which his business shall be done and the results to be accomplished * * when the employer loses the authority, for whatever cause, to direct the employee in the labor for which he is employed * * the relation of employer and employee necessarily ends."

Mendoza v. Gallup Southwest Coal Co., 41 N.M. 161.

Article V, Section 14 of the Constitution made the Highway Commission the employer over its personnel:

"the power retained by the employer to fire at will gave a right, in fact, of unlimited control over the worker."

Sucetti v. Jones' Estate, 38 N.M. 327, citing Burrus v. B. N. C. Logging Co., 38 N.M. 254.

A general overall personnel procedure plan for the executive branch might be desirable, as you point out.

The Legislature of 1935 must have so felt, but the people of New Mexico, by the adoption of the constitutional amendment, felt that the Highway Commission should have charge over its own employees. It is a well known fact of contemporary history that the paramount purpose {*298} behind the adoption of Article V, Section 14 was to remove the State Highway Commission from all political influence and this constitutional amendment should be interpreted to promote and not to defeat this paramount purpose. Its complete defeat can be envisaged by admitting any force and effect of these sections over the State Highway Commission.

We conclude, therefore, that the State Highway Commission had authority to enter into the contract with the Public Administration Service pertaining to the personnel procedure plan, and as the services were performed, the voucher in payment thereof should be honored by your office.