Opinion No. 53-5635

January 13, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. A. M. Frazier Employment Security Commission of New Mexico 103 South Sixth Street Albuquerque, New Mexico

*{*19}* You have requested an opinion from this office concerning the administration of the Veterans' Readjustment Assistance Act of 1952 (PL 550, 82d Cong.), in light of the provisions of Title 8, Ch. 57, N.M.S.A., 1941.

Title IV of PL 550 provides for the payment of unemployment compensation to discharged veterans having military service on or after June 27, 1950. It further authorizes agreements between the Secretary of Labor on behalf of the United States, and the State Employment Compensation agencies for their respective states, for the administration of such unemployment compensation. The Act contemplates that the veteran shall not be eligible for such Federal benefits if he is eligible for State Unemployment Compensation in amount of $ 26.00 per week, or more. If he is eligible under a State compensation Law for a weekly amount of less than $ 26.00 then he may receive under the Veterans' Readjustment Assistance Act the amount necessary to bring his total State-Federal Compensation to $ 26.00 per week.

As you have pointed out, under New Mexico law a veteran eligible for compensation may receive a weekly benefit of from between $ 10.00 to $ 25.00. Thus it would appear that a veteran receiving New Mexico compensation would also be entitled under PL 550 to a supplemental benefit to increase his total weekly benefit to $ 26.00. The question which is immediately raised, however, is whether the Unemployment Compensation Law of New Mexico will permit such dual benefits.

Section 57-805, N.M.S.A., provides that an individual shall be disqualified from benefits under certain conditions, including;

"(f). For any week with respect to which, or a part of which, he has received or is seeking employment benefits under an unemployment compensation law of another state or of the United States; provided, that *{*20}* if the appropriate agency of the other state or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply."

Reading this section alone, its clear and obvious meaning would be that an individual could not, under any circumstances, receive unemployment compensation under the New Mexico law and under another such compensation law at the same time.

There is, however, another provision of the New Mexico Act, Section 57-824, N.M.S.A., which describes very closely, and appears to authorize, the plan of operation

contemplated by the Congress in the enactment of the Veterans' Readjustment Assistance Act. Section 57-824 reads in part as follows:

"(a). The Commission is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the Federal Government, or both, whereby: * * *"

"(2). Potential rights to benefits accumulated under the Unemployment Compensation laws of one or more states or under such a law of the Federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund."

Is it possible to harmonize Sections 57-805 and 57-824, where the former is a disqualification provision and the latter specifically authorizes the making of combined payments based upon potential rights under two or more laws? It is a maxim of statutory construction that an interpretation of a statute which creates an inconsistency should be avoided, and since all laws are presumed to be consistent with each other, every effort should be made to harmonize and reconcile them. 50 Am. Jur. 367. Applying this rule of statutory construction full effect can be given to both Section 57-805 and Section 57-824 without doing violence to either.

In my opinion, the Legislature in enacting Section 57-805 intended primarily to prescribe safeguards against an individual filing claims for duplicate benefits under two or more unemployment compensation laws. Incidentally, it is quite obvious that Congress also sought to avoid the drawing of duplicate benefits by adopting Section 408-B, Title IV of the VRAA. It is further my opinion, in reading Section 57-824, that the Legislature wanted to provide for such a dual program as is contemplated in Title IV of the VRAA, and authorized the Commission to enter into agreements for that purpose. The sole qualifications are that such agreements shall be fair and reasonable to all affected interests and that there shall result no substantial loss to the State fund. It is apparent, I believe, that the type of arrangements authorized by Section 57-824 and contemplated by Title IV of PL 550 will involve no duplicate payment of compensation benefits. The latter is all that Section 57-805 sought to avoid.

In summary, it is my opinion that there is no inconsistency between Sections 57-805 and 57-824, N.M.S.A., and that nothing under New Mexico law prohibits dual payment of unemployment compensation, so long as such payments not duplicative in nature. It would appear that your contemplated operation under Title IV of the VRAA is the type *{*21}* of plan the Legislature envisioned in its enactment of Section 57-824.

I trust that this opinion answers all your questions on this subject.

By: W. F. Kitts

Asst. Attorney General