

Opinion No. 54-6060

December 17, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Alfred W. Kaune State Bank Examiner Santa Fe, New Mexico

{*534} You have requested the opinion of this office upon the following matter:

Prior to June 13, 1954, Mr. Lilburn Homan had been appointed and was acting as Small Loan Examiner under the supervision of your office. Early in June, 1954, you considered it advisable to broaden the authority and powers of Mr. Homan, and appointed him deputy bank examiner on June 13, 1954. Thereafter, Mr. Homan furnished bond in the amount of \$ 10,000 through the American Employers Insurance Company, upon which bond a premium of \$ 100.00 was charged.

On September 13, 1954, a voucher of the said premium was submitted to the State Auditor for approval and payment. On September 14, 1954, the State Auditor declined to approve the said voucher for payment, upon the ground that Mr. Homan had been paid for his services for the state as a "special investigator," and that he had not been considered, by the State Auditor, as employee of the state.

You ask our opinion as to the correctness of the State Auditor's action.

We are of the opinion that the Auditor should have approved and should have paid the voucher submitted for the premium upon Mr. Homan's bond, and that his refusal so to do was incorrect.

Section 48-6-2, N.M.S.A., 1953, provides:

"Employees and clerks -- Designation of deputy. -- The state bank examiner may appoint and employ such examiners and clerks as the business of his office may require and as may be provided for by law at such {*535} salaries, payable out of the salary fund, as may be provided by law. In the event the business of the office shall require, the state bank examiner may designate one (1) or more of said examiners or clerks to act as his deputy with all the powers herein conferred upon the state bank examiner."

Section 48-6-3, N.M.S.A., 1953, provides in part:

". . . The deputy state bank examiner shall, before entering upon the discharge of his duties sign and furnish a similar bond with like conditions in the penal sum of ten thousand dollars (\$ 10,000). Such bonds shall be approved by the governor and filed with the secretary of state. The cost of such bonds shall be charged as an expense of the state bank examiner . . ."

Apparently, the basis of the State Auditor's objection to the voucher submitted to him was that Mr. Homan, prior to his designation as a deputy state bank examiner, was not employed as an "examiner," and paid out of the Salary Fund of the State Bank Examiner's Office, and that he was employed as a "special investigator."

We believe that that fact in no way could have invalidated Mr. Homan's said designation. Section 48-6-2 clearly empowers the State Bank Examiner to designate one or more of his "examiners" to act as his deputy. There is no substantial distinction in connotation between the words "investigator" and "examiner." Surely, it was within the contemplation of the statute that the State Bank Examiner might designate an "investigator" to act as his deputy.

It will be noted that no specific means of remuneration is provided for a deputy state bank examiner, and we fail to understand how his payment by means of purchase of vouchers (as the State Auditor contended Mr. Homan had been paid) would invalidate his appointment as such a deputy. We believe that the method by which Mr. Homan was paid for his services prior to his designation as a deputy could have no bearing upon the validity of such designation. As an investigator, Mr. Homan was a member of the class (i.e., "examiners and clerks") from which a deputy might be appointed. It is our opinion that it was not the intention of the Legislature, in adopting Section 48-6-2, to cause the invalidation of an appointment of an examiner or a clerk as deputy state bank examiner because of the manner in which such examiner or clerk might have been paid for his services prior to his appointment as a deputy.

Section 48-6-3 requires that deputy state bank examiners be bonded, and specifically provides that the cost of their bonds should be charged as an expense of the State Bank Examiner.

We conclude that Mr. Homan was properly appointed a deputy state bank examiner, that, by law, he was required to be bonded, and that the cost of his bond was properly an expense of the State Bank Examiner's office. The action of the State Auditor was incorrect.

Trusting that the foregoing will answer your question satisfactorily, I am

By: Henry A. Kiker, Jr.

Assist. Attorney General