

Opinion No. 55-6182

June 7, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Homer C. Pickens, Director, Department of Game and Fish, Santa Fe, New Mexico

In your letter of June 3, 1955 you advise that the State Auditor has requested that your Department supply his office with a certificate of employment for every employee hired by your Department and in such request stated that your Departmental payroll was to be held up by the Auditor until such certificate had been received. You state that the Auditor claims authority for this action under Sections 4-4-5 and 4-4-6 of the 1953 Compilation.

Section 4-4-5, provides as follows:

"It shall be the duty of every officer who holds, under the laws of this state, an appointment authorizing him to receive his pay from the treasury of the state, to furnish to the state auditor a certificate thereof, authenticated by competent authority, setting forth the date upon which he entered upon the discharge of his duties."

Section 4-4-6 prohibits issuing a warrant to any of the persons included in the above section until they have complied therewith.

The above quoted section applies by its terms to "officers." The distinction between public officers and public employees has been pointed out by this office on numerous occasions, and the difference between the two classes has been thoroughly discussed by the Supreme Court of New Mexico in **State ex rel Gibson vs. Fernandez**, 40 N.M. 288, 58 Pac. 2d 1197. Your attention is directed to Attorney General's Opinions Nos. 5807 and 5812 both published in the 1953-54 Report of the Attorney General, in which this distinction is discussed.

In so far as the Department of Game and Fish is concerned, we are of the opinion that the position which you hold is the only position falling within the category of "public officer" as defined in **State ex rel Gibson vs. Fernandez**, supra.

From the foregoing, it is our opinion that Sections 4-4-5 and 4-4-6 of the 1953 Compilation, apply only to public officers and that it is not necessary that certificates be obtained as provided in that section, for personnel of the Department other than yourself.

By: Walter R. Kegel

Assistant Attorney General