

Opinion No. 56-6462

June 7, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Manuel A. Armijo, Director, New Mexico Veterans' Service Commission, P. O. Box 1723, Santa Fe, New Mexico

We have your letter of May 18, 1956, in which you request an opinion as to the legality of a resolution passed by the New Mexico Veterans' Service Commission which reads as follows:

"Mr. Civerolo moved that the Commission authorize the Administrative Assistant to sign all instruments, papers, and checks, and use the necessary seal in order to approve or sign all necessary instruments, papers and checks, to carry on the business of the Commission in the absence of the Director, and that the Administrative Assistant should be placed under the necessary bond. Mr. Drysdale seconded the motion and it was unanimously carried."

In your letter you state the purpose of this resolution was that it was necessary to have a person other than the Director to sign various legal documents in order that the Director may have his annual leave, and also that it is necessary for the convenience and operation of the work of the New Mexico Veterans' Service Commission.

Section 74-1-4, N.M.S.A., 1953 Compilation, reads as follows:

"The disabled soldiers, relief commission (New Mexico Veterans' Service Commission) shall be a public corporation under the name of 'Disabled Soldiers' Relief Commission,' ('New Mexico Veterans' Service Commission') and under its corporate name an agency of the State of New Mexico. The management and control of the said commission is hereby vested in the commissioners appointed under the provisions of this article (74-1-1, 74-1-4 to 74-1-9), Provided, however, that the director, appointed and employed as provided in said article shall have the power and authority to execute all legal documents and undertakings, in the name of said commission, which may be necessary or required. Subject to the Constitution of this State, the disabled soldiers, relief commission (New Mexico Veterans' Service Commission) shall have the power;

(a) To sue and be sued in any matters within the scope of its powers and authority as granted to it by the legislature of this state.

(b) To exercise all powers heretofore granted, and which may hereafter be granted.

The seal heretofore authorized shall be the corporate seal of said commission, and shall be affixed to all official documents and undertakings, executed in the name of said commission, by the said director.

It is obvious from this section that the Director appointed by the New Mexico Veterans' Service Commission does have, by statute, the authority to sign all necessary papers in all actions in which the New Mexico Veteran's Service Commission has an interest.

In view of the fact that the Legislature has seen fit to authorize the Director of the New Mexico Veterans' Service Commission to sign the various documents necessary for the operation of such Commission, does the Commission have power to authorize persons other than the Director to sign these various papers in order that the functions of the Veterans' Service Commission may be carried on properly? Section 74-1-6, N.M.S.A., 1953 Compilation, reads as follows:

"The said commission shall within ten (10) days after their appointment appoint and employ a director of veterans' affairs, and such other assistants both executive and clerical as may be necessary, the governor being well advised and consenting to all such appointments. All appointees and employees of the disabled soldiers' relief commission (New Mexico Veterans' Service Commission) shall be veterans, except that a stenographer may be employed from the wives, widows, sisters or children of veterans.

"The director of veterans, affairs shall receive a salary of two thousand seven hundred dollars (\$ 2,700) a year. The annual salary of any assistant not clerical shall be in the discretion of the commission, but not to exceed two thousand four hundred dollars (\$ 2,400) per annum. Clerical assistants shall receive a salary in the discretion of the commission not exceeding one thousand five hundred dollars (\$ 1,500) per annum. All salaries herein provided shall be paid at the time and in the manner as other salaries to state officers or employees are paid."

It is to be noted that the Veterans' Service Commission from this section is authorized to employ a director together with other assistants, both executive and clerical. In other words the Legislature has seen fit to make a distinction between the type of assistants which may be employed. It would appear that the executive assistant to the director would be in the nature of a deputy director, and is not an assistant in the ordinary sense in which this term is generally used. Strength is added to this conclusion when we study Section 78-1-8, N.M.S.A., 1953 Compilation, which empowers the director and the executive assistants to administer oaths and affirmations and execute attestations and certificates in all cases where magistrates and other officers within the State are authorized to administer such oaths.

We note further under Section 74-1-5 (a), N.M.S.A., 1953 Compilation, which reads as follows:

"It shall be the duty of the said disabled soldiers' relief commission (New Mexico Veterans' Service Commission), and the said commission shall have power and authority:

(a) To make such rules and regulations as may be necessary for the proper administration of the office. . . ."

that the New Mexico Veterans' Service Commission is authorized to make such rules and regulations as may be necessary for the proper administration of the office. We would conclude from this that the New Mexico Veterans' Service Commission could, by proper rule and regulation duly promulgated according to the laws of the State of New Mexico, make a detailed assignment of the duties of such executive assistants empowered to be appointed under the provisions of Section 74-1-6. As heretofore pointed out the executive administrative assistant to the director is really, in fact, more like a deputy. We believe that the usual attributes of such deputy would fall upon such executive administrative assistants. See 67 C. J.S., Sections 148 through 154 (Officers) pages 449 to 452 inclusive; 43 Am. Jur. (Public Officers) Sections 460 through 469, pages 218 to 224 inclusive.

We therefore are of the opinion that under the powers set forth in Section 74-1-5, N.M.S.A., 1953 Compilation, the New Mexico Veterans' Service Commission could, by proper rule and regulation, duly promulgated as provided by the laws of the State of New Mexico, authorize the executive administrative assistant of said Commission to sign all instruments necessary to carry out the functions of the New Mexico Veterans' Service Commission as provided by law.

We are not unmindful of the Attorney General's Opinion No. 5519, dated March 19, 1952, and insofar as said opinion is in conflict herewith, it is expressly overruled.

Trusting we have answered your questions, we remain

By: Paul L. Billhymer

Assistant Attorney General