

## **Opinion No. 57-11**

January 16, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Mrs. Georgia L. Lusk, Superintendent of Public Instruction, Department of Education, State of New Mexico, Santa Fe, New Mexico

### **QUESTIONS**

#### QUESTIONS

You have presented the question relative to the payment of salaries to school teachers during the time they spend as members of the Legislature and receive financial allowance for legislative service.

#### CONCLUSION

Payment of the teachers' salaries under such circumstances is not prohibited.

### **OPINION**

#### ANALYSIS

Having in mind the circumstances, the question is whether the teachers' salaries can be paid under Section 2-1-4, which is as follows:

**COMPENSATION AS STATE OFFICER OR EMPLOYEE OTHER THAN THAT RECEIVED AS A LEGISLATOR PROHIBITED.** -- From and after January 1, 1945, it shall be unlawful for any member of the legislature, during the term for which he is elected to contract for or receive any compensation for services performed as an officer or employee of the state, except such compensation and expense money as he is entitled to receive as a member of the legislature.

and under Section 2-1-5, which is as follows:

**PAYMENT OF OTHER COMPENSATION TO LEGISLATOR FOR ACTING AS OFFICER OR EMPLOYEE OF STATE PROHIBITED.** -- From and after January 1, 1945, it shall be unlawful for any officer of the state of New Mexico to pay to any member of the legislature compensation for services rendered the state of New Mexico as an officer or employee thereof during the term for which such legislator was elected except such compensation and expense money which such member is entitled to receive as a member of the legislature.

In Attorney General's Opinion No. 4645, 1945-46, the Honorable C. C. McCullough ruled that these sections only pertained to legislators who are officers or employees of the state as such. Inasmuch as a school teacher is hired either by a county board of education or a municipal school board, he is not a state employee except in the broadest sense of the term. Attorney General McCullough reasoned that what is now Section 2-1-5 lent further emphasis to his holding by reason of the fact that it prohibited payment by a state officer and did not preclude payments made by county or local officials.

We agree with the conclusion and reasoning set forth in said opinion, and accordingly adhere to the same. A copy thereof will be made available to you, if you so desire.

Trusting that this fully answers your inquiry, we remain,