

**Opinion No. 57-231**

September 13, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Santiago E. Campos,  
Assistant Attorney General

**TO:** Mr. John C. Hays, Executive Secretary, Public Employees Retirement Association  
of New Mexico, P. O. Box 2237, Santa Fe, New Mexico

**QUESTION**

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Are employees of Fish and Wildlife Service employees of the State of New Mexico for purposes of our State Retirement Act at such times as they are paid by state funds?

CONCLUSION

No.

**OPINION**

ANALYSIS

The Fish and Wildlife Service is a department or agency within the Department of the Interior of the United States.

Your question arises by virtue of the fact that employees of the Fish and Wildlife Service are, on occasion, paid by state warrants from state funds. However, this circumstance standing alone does not, in our opinion, make the employees of the Fish and Wildlife Service employees of this state.

Fish and Wildlife personnel perform services for the State of New Mexico in two areas; 1. the control and destroying of predatory animals and rodents in the interest of protection of crops and livestock and improvement of range conditions, (See § 47-16-1, N.M.S.A., 1953), and 2. predatory animal and rodent control in the interest of protecting wild game and fish. The first of these programs is implemented under a bipartite agreement between the Fish and Wildlife Service and the New Mexico College of Agriculture and Mechanics Arts and the second under a tripartite agreement wherein the Fish and Wildlife Service, the College of Agriculture and Mechanic Arts and the Department of Game and Fish of this state are the parties.

In essence, both of these agreements provide that the programs for eradication and control are under the direct supervision of the Fish and Wildlife Service although there are provisions in each of the agreements whereby cooperation between the parties is

provided for in the formulation of policy affecting personnel and other aspects of the programs.

It appears that supervision and control of the employees in question is exercised by the Fish and Wildlife Service. The agreements are less than clear on this although this may be implied from the provision giving the Fish and Wildlife Service direct supervision of the programs under each of the agreements. Thus the situation here, as it bears upon the relationship of this state and employees of the Fish and Wildlife Service, is roughly comparable to that between the employees of an independent contractor and a party for whom the independent contractor undertakes to provide his services. In such a situation, it is settled that the employees are the employees of the independent contractor and not in any sense employees of the other contracting party. If our analogy is correct, and we cannot think of a better one, then the employees which you ask about are not employees of the State of New Mexico but rather employees of the Federal Government.

And that part of the Retirement Act which defines employees for the purpose of the Public Employees Retirement Act requires not only that the employees be paid by state warrant but that they be, in fact, in the employ of the State of New Mexico or a municipality within the state § 5-5-1 (7), N.M.S.A., 1953.