

Opinion No. 57-268

October 17, 1957

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

TO: Mr. Homer C. Pickens, Director, Department of Game and Fish, *2* Santa Fe, New Mexico

QUESTION

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Under Section 53-1-5, N.M.S.A., 1953 Compilation, 1957 Supplement, does the Director of the Department of Game and Fish by and with the approval of the State Game Commission and the State Board of Finance, have authority to adjust salaries of employees in the Department of Game and Fish?

CONCLUSION

Yes, subject to the provisions of the "Personnel Act" of New Mexico.

OPINION

ANALYSIS

In our opinion, two statutes have bearing upon your problem. The first in Section 53-1-5, N.M.S.A., 1953 Compilation, 1957, Supplement, which reads:

"The state game commission shall employ a director who shall, under such authorization that the game commission shall approve, employ such conservation officers, clerks and other employees as he shall deem proper and necessary to enforce and administer the laws and regulations relating to game and fish, and who shall prescribe their duties respectively, and who with the advice and consent of the state game commission and the approval of the state board of finance, shall fix the compensation of all the employees of the department of game and fish, which is hereby created.

'The state game commission may at any time discharge said director for reasons that the state game commission shall deem sufficient. The director may at any time discharge any employee for good cause.

"Provided that the employee may request and receive a hearing before the state game commission, such request to be made within fifteen (15) days after he receives the notice of discharge."

The first section of the "Personnel Act", compiled as Section 5-4-1, N.M.S.A., 1953 Compilation, is as follows:

"The governor is hereby authorized and empowered, subject to the approval of the state board of finance, to classify all employees in the executive department of the state, including all offices, departments and institutions, having due regard to the character of the work performed, the training required for performance, and the importance of the service, it being the purpose of this act to provide substantially equal salaries for services of equal value. The governor is further authorized, subject to the approval of the state board of finance to fix, within the limitations of applicable appropriations, the salary limitations within each such classification. Such classification when so made for any department, office or institution, shall be approved by the governor and filed in the office of the secretary of state, and a copy thereof furnished to the head of the department, office or institutions affected, and after the filing of any such classification it shall be unlawful to pay any employee any compensation in excess of that fixed for the classification within which said employee falls, notwithstanding any appropriation providing a larger or greater compensation for such employee; Provided, that the governor shall have the power to designate and employ a personnel director who shall assist him in the performance of the duties imposed upon the governor by the terms of this section."

After due reflection, it is our opinion that both quoted sections are compatible, and should be followed.

Accordingly, the proper procedure would be for you to submit a salary adjustment or classification plan to the Game Commission. Upon the approval thereof by the Game Commission, the plan should be submitted to the Governor, for approval by the State Board of Finance. That body can, of course, call upon its fact-finding agency, the Personnel Board, to determine if the plan is in accordance with the over-all policy exhibited by Section 5-4-1, supra. Under either statute, final approval is vested in the State Board of Finance.

Since the Department of Game and Fish is not a constitutional agency, and there being no question herein governed by the provisions of the Enabling Act, Opinion of the Attorney General No. 57-205, dated August 15, 1957, does not control this case.