

Opinion No. 58-14

January 20, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
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TO: Mr. Ed Hartman, Director, Department of finance and Administration, Santa Fe,
New Mexico

QUESTION

QUESTION - FACTS

The San Miguel County Treasurer employs a deputy under Section 15-43-4.4, 1957 Supp., paying him the statutory limit of \$ 3,360.00 - also, employed in the office of the Treasurer is a helper authorized by the County Commissioners, drawing compensation under the budgeted amount for Treasurer's expenses. While no certainty is had on the amount paid this second employee, it is assumed that his compensation is less than the budgeted moneys available and that this inquiry concerns the moneys remaining unexpended in the budgeted line amount. Other factors assumed include the necessity of overtime work to properly serve the public during peak load periods.

May either the deputy or the helper be paid for overtime work performed after regular working hours during rush periods?

CONCLUSION

Yes.

OPINION

ANALYSIS

This office has been unable to locate judicial pronouncement in any jurisdiction that is dispositive of this precise issue. The variance in constitutional provision, in statutory enactment, in authority retained and authority delegated, in manner of payment such as fee, commission, percentage, salary, etc., gives rise to such variance in general principle that no valid precedent appears to guide us.

Hence, we are driven to weigh our statutes and the public interest in the hope that we may arrive at a logical conclusion.

Sec. 15-37-16 is a general conferment of power in the county commissioners on county matters. Several Supreme Court cases and previous opinions from this office have construed this provision as vesting in the commissioners the authority and

responsibility, among other things, of using available funds "to employ such agents and servants as may be required for county purposes and which are not otherwise provided for by statute or the State Constitution". (A.G. Opinion 1939-40, p. 97). While it is the opinion of this office that the salary allowance statutorily set by Sec. 15-43-4.4 for the treasurer's "deputy or deputies" is binding on the county commissioners for the services rendered during regular working hours, we are of the opinion that services rendered over and beyond the legislative purview are not included in the statutory compensation.

A case, not precisely in point, but at least giving a clue to the sense of our Supreme Court in a comparable situation is *State ex. rel. Sedillo v. Sargent*, 24 N.M. 333. There the plaintiff, a state employee, sought recovery for work done over and beyond that which was statutorily envisaged and the Court held that such services may be extra compensated.

Supporting this view, we also advance the furtherance of the public weal - it seems obvious the county offices bear a peak load at certain times of the year. To permit optimum service to the public, it is desirable that elasticity in the use of experienced personnel in the treasurer's office be made possible - that if overtime is necessary to provide such elasticity of service, the county must be able to pay for it.

Hence, we are of the opinion that overtime compensation out of budgeted moneys may be paid either or both of the employees for work done outside of regular working hours.