

Opinion No. 59-90

July 31, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Honorable Albert O. Lebeck, Jr. 3 Utah Circle Gallup, New Mexico

{*148} This is in response to your recent request for an opinion on the following:

- (1) Can the employees of the Town of Gallup join a union, and
- (2) Can the employees engage in collective bargaining, picketing, striking and other activities generally regarded as union rights?

It is our opinion that:

- (1) The employees could probably belong informally to a labor union, but the public employer would not have to recognize the union, and such membership could properly be made grounds for their dismissal, should the municipal authorities so rule.
- (2) No, the employees of a state, municipality, or any other political subdivision of a state may not engage in collective bargaining, picketing or striking.

Attorney General's Opinion No. 6207 ruled that the employees of the New Mexico Insane Asylum could not engage in striking or collective bargaining and that it was doubtful that they could organize a union.

Attorney General's Opinion No. 6308 reiterated the holding in No. 6207 and extended it to include all the employees of **the state and its political subdivisions**. This opinion stated that an organization of public employees would not have to be recognized by the governing body and certainly the members would not have the right to engage in collective bargaining or striking. It further laid down the generally recognized rule that membership in a union may be insubordination and grounds for dismissal.

The reasons advanced by the courts in denying the right of public employees to engage in union activities are the sovereignty of the public employer; the fact that the government is established by and run for all of the people and not for the benefit of any person or group; that the profit system is missing in public employment; that public employees owe undivided allegiance to the public employer; and that the continued operation of public employment is indispensable in the public interest.

In speaking of this problem, the Court in **Perez v. Board of Police Comm'rs (1947)**, 78 Cal. App. 2d 638, said:

"All public officials, whether national or state, executive, administrative or judicial, and all public employees, are public servants. There is but one master, the people. Hence, the common expression that, 'This is a government of laws and not of men.' The allegiance of all public servants is to the people; obviously there can be neither alienation nor division of this allegiance if constitutional government is to continue."

The Attorney General adopts the well recognized view that allegiance to a union and allegiance to a municipality are inconsistent and that public employees owe their undivided allegiance to the governmental authority. The former opinions of this office referred to above are reaffirmed by this opinion for the reasons stated.

By B. J. Baggett

Assistant Attorney General