

Opinion No. 60-19

February 5, 1960

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

TO: Mr. Floyd Cross State Personnel Director Santa Fe, New Mexico

QUESTION

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Reconsideration of Opinion of Attorney General No. 59-151 as it pertains to the Bureau of Weights and Measures, Department of Agriculture and the Bureau of Mines and Mineral Resources holding these agencies to be subject to the Personnel Act.

CONCLUSION

Opinion No. 59-151 is hereby modified in part. The agencies named above are not subject to the Personnel Act.

OPINION

{*361} ANALYSIS

The Personnel Act exempts "educational institutions" and the question presented is whether the three agencies above are a part of {*362} the educational institutions to which they are annexed and under whose control they operate.

Article XV, Section 1 of the New Mexico Constitution provides as follows:

"There shall be a department of agriculture which shall be under the control of the board of regents of the College of Agriculture and Mechanic Arts; and the legislature shall provide lands and funds necessary for experimental farming and demonstrating by said department."

Chapter 202, Laws of 1959, creates the office of superintendent of weights and measures and provides in part in Section 4:

". . . The board of regents of the New Mexico college of agriculture and mechanic arts shall be the state superintendent of weights and measures and the director of the state department of agriculture shall be the deputy superintendent of weights and measures . . ."

Section 63-1-1, N.M.S.A., 1953 Comp. provides:

"There is hereby established a Bureau of Mines and Mineral Resources of the state of New Mexico which shall be a department of the New Mexico School of Mines and under the direction of its board of regents . . ."

These departments of educational institutions admittedly do not have as their sole function the classroom education of students. However, the facilities of these departments are a part of, and annexed to, the institutions themselves and it is difficult to separate them.

It has been argued, and correctly we feel, that the term "college" or "university" embraces the complete institution with all of its departments. **Shepherd v. Union and New Haven Trust Company**, 138 Atl. 809 (Conn.) It is conceded that these departments do not maintain the curriculum of courses or grant degrees. However, it is a fact that the facilities of these departments, including established scientific laboratories are utilized by graduates and undergraduates alike for the purpose of completing work requirements toward degrees awarded by other departments of the institutions.

The Court, in the case of **State of Montana ex rel Public Service Commission v. Brannon**, 283, P. 202, 57 A.L.R. 1020, (Mont.) defined the functions of a state university as follows:

"While its functions are not specified in the Constitution, no one will dispute the assertion that the main function of the University is the education of youth, yet its activities go further than that. The University of Montana . . . while established and maintained primarily for educational purposes, has wider functions than mere scholastic instruction. The activities of modern universities embrace a wider scope than mere teaching. When sufficiently financed, research and experimental work of great value to the public is constantly being carried on by them. As a part of the work scientific treatises, of high practical worth, are put forth which contribute substantially to state and national progress along industrial, economic and cultural lines. Indeed, the potentialities of service which may be rendered through these agencies cannot be compassed by any small measure. The knowledge diffused by these institutions radiates far beyond the student body."

It may be that for some purposes these agencies might not be considered an integral part of the institutions to which they are annexed and through which they function, but for the purpose of {*363} this determination, it is the holding of this office that the agencies hereinbefore described are part of the educational institutions which control them and as such are exempt from the application of the State Personnel Act.

Opinion of the Attorney General No. 59-151 is modified to the extent required by the ruling in this opinion.

By: B. J. Baggett

Assistant Attorney General