

Opinion No. 60-229

December 27, 1960

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

TO: Mr. Harold R. Baer Deputy Director Office of Civil and Defense Mobilization Santa Fe, New Mexico

QUESTION

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1. The Federal Administrator of Civil Defense has allocated certain funds for the New Mexico Office of Civil and Defense Mobilization. What action should the Office of Civil and Defense Mobilization take now to avail itself of these funds?
2. The Office of Civil and Defense Mobilization is presently operating under an approved merit system plan for its personnel. Is the Office also subject to the State Personnel Act?

CONCLUSIONS

1. See analysis.
2. Yes.

OPINION

{*653} ANALYSIS

By the provisions of § 4 of Public Law 85-606, August 8, 1958, 72 Stat. 533, the Federal Administrator is authorized to make financial contributions to the States on the basis of approved plans submitted by the States. Therefore, you should now submit a plan for the use of the funds that are allocated to New Mexico. We quote the requirements for such plans from § 4 of Public Law 85-606, supra:

"Plans submitted under this section shall:

- (1) Provide, pursuant to State law, that the plan shall be in effect in all political subdivisions of the State and be mandatory on them, and be administered or supervised by a single State agency;
- (2) Provide that the State shall share the financial assistance with that provided by the Federal Government under this section from any source determined by it to be consistent with State law;

(3) Provide for the development of State and local civil defense operational plans, pursuant to standards approved by the Administrator;

(4) Provide for the employment of a full-time civil defense director, or deputy director, by the State, and for such other methods of administration, including methods relating to the establishment and maintenance of personnel standards on the merit basis (except that the Administrator shall exercise no authority with respect to the selection, tenure of office,, and compensation of any individual employed in accordance with such methods) as the Administrator shall find to be necessary and proper for the operation of the State plan;

(5) Provide that the State shall make such reports in such form and content as the Administrator may require;

(6) Make available to duly authorized representatives of the Administrator and the Comptroller General, books, records, and papers necessary to conduct audits for the purpose of this section.

When your office has submitted its plan in accordance with these requirements, and it has been approved by the Administrator, he is then authorized to distribute funds to this State without any further action by your office, unless some further action is prescribed by the Administrator under his authority to prescribe rules and regulations to carry out the purposes of the Federal Act.

Turning to your second question, we understand that your office has already established a merit system that has been approved by the Merit System Council, and has been in effect since November 1, 1960. Attorney General's Opinion No. 59-151, September 29, 1959, held that the Office of Civil and Defense Mobilization is subject to the State Personnel Act. This result was undoubtedly correct under § 5-4-20, N.M.S.A., 1953 Compilation (P.S.), and that section has not been amended since the date of the opinion. Nothing in the Personnel Act indicates that agencies that have adopted merit systems are thereby exempted from the operation of the Personnel Act. Therefore, {*654} it is our opinion that, despite the existence of your merit system, your office is still subject to the State Personnel Act. We do not think that this holding creates any additional problems because there is nothing in the Personnel Act that is antagonistic to a merit system, and we feel that regulation under the Personnel Act can coexist with a merit system.

By: Norman S. Thayer

Assistant Attorney General