

Opinion No. 60-238

December 28, 1960

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

TO: Mr. Charles C. Stabb Director Social Security Division Public Employees Retirement Association Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Who is the "employer" of persons employed under the provisions of § 12-2-11, N.M.S.A., 1953 Compilation-
2. What is the status of the public employees included in Chapter 174, Laws of 1957?

CONCLUSIONS

1. See analysis.
2. See analysis.

OPINION

{*662} ANALYSIS

Section 12-2-11, N.M.S.A., 1953 Compilation (P.S.), authorizes the Board of County Commissioners of any county to employ persons in addition to the district health officers to execute the health laws properly. Such employment is subject to the approval of the Director of the Public Health. The salary of the additional employees is paid from the "county health fund", which is a fund raised at the county level through the levy of a property tax. See § 12-3-35, N.M.S.A., 1953 Compilation. It is settled that the power to employ and discharge persons employed under the provisions of § 12-2-11, supra, is not vested in either the Director of Public Health or in the district health officers, but is vested solely in the Board of County Commissioners. **Board of Commissioners {*663} of Colfax County v. Department of Public Health**, 44 N.M. 189, 100 P. 2d 222 (1940). Since the Board of County Commissioners has the power to employ and discharge, and the employees are paid from county funds, we are of the opinion that the Board of County Commissioners is the "employer" of the persons employed under the provisions of § 12-2-11, supra.

We interpret your second question to ask whether the employees included within Chapter 174, Laws of 1957, are employees of the county or of the State. Chapter 174, Laws of 1957, includes § 12-2-11, discussed above, and the only other public

employees mentioned in Chapter 174 are the district health officers themselves. We have already observed that persons employed under § 12-2-11, supra, are employed by the Board of County Commissioners, are subject to discharge by the Board of County Commissioners, and are paid their salaries from county funds. Therefore, it is our opinion that persons employed under § 12-2-11, supra, are county employees.

The district health officers are employed by the district health boards, § 12-2-3, N.M.S.A., 1953 Compilation (P.S.), which, in turn, are appointed by the Boards of County Commissioners of the counties that comprise the particular health district § 12-2-2, N.M.S.A., 1953 Compilation. The power to initiate proceedings for the discharge of a district health officer is not vested in the Boards of County Commissioners, but is expressly vested in the district health boards and in the State Board of Public Health. See § 12-2-3, supra. The salary of the district health officers is paid from a state fund known as the "District Health Officer's Fund." This fund is authorized by § 12-2-6, N.M.S.A., 1953 Compilation (P. S.), and is raised from equal contributions from each of the state health districts. Each district raises its share from the county health funds of each county within the district, prorated among the counties according to their assessed property valuation. This fund is augmented at the state level by an appropriation from the state general fund. It seems clear to us, then, that district health officers are paid with state funds, and not county funds, for we view the counties merely as agencies for the collection of the "District Health Officer's Fund", and the fund itself is a state fund raised by statewide taxation and placed in the custody of the State Treasurer. We also think it clear that district health officers are not employed by the counties, but by the state through the district health boards. Just as judicial districts are created simply for convenience in providing the requisite judicial force to administer the law throughout the state, **Tudesque v. New Mexico State Board of Barber Examiners**, 65 N.M. 42, 331 P. 2d 1104 (1958), we feel that the health districts are created for convenience in providing the requisite health force to administer the state's health laws. Since the district health officers are employed by the state, may only be discharged through proceedings initiated by the State Board of Public Health or the district health board of one of the state's health districts, and are paid their salaries with state funds, it is our opinion that the district health officers are state employees.

By: Norman S. Thayer

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