

## Opinion No. 61-121

November 29, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

**TO:** Mr. Edward M. Hartman, Director, Department of Finance and Administration, Santa Fe, New Mexico

### QUESTION

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May State employees who were given a holiday by their Department Head on November 24, 1961, be paid for this day?

#### CONCLUSION

Yes.

### OPINION

#### ANALYSIS

The background facts giving rise to the issue now presented are as follows. Veterans' Day, November 11, 1961, fell on a Saturday. A memorandum from the Personnel Director declaring November 10 as the date this legal holiday would be observed was subsequently countermanded by the Executive Department. Consequently, to the best of our knowledge, all State agencies worked as usual on November 10, 1961. However, the heads of some departments and agencies decided to grant compensatory time off to their employees to make up for working on that date. Friday, November 24, the day following Thanksgiving, was the date chosen for allowance of this compensatory time.

It is our opinion that this action by certain department heads was justified and hence the employees in such departments should be paid for this day.

Before explaining specifically the basis for our opinion, we should point out that Section 56-1-8, N.M.S.A., 1953 Compilation (P.S.), enumerates certain days, including November 11, as public holidays. This Section goes on to provide that "**any day** which may hereafter be designated as a public holiday by the legislature of this State, and any day appointed or recommended by the governor of this state, **or the President of the United States**, as a day of Thanksgiving or fasting and prayer, or other religious observance, shall . . . be treated . . . as public holidays." (Emphasis added).

There is, in addition to the above-statute, a separate legislative enactment designating Veterans' Day as a legal holiday, and in one certain respect it is unique. It is this unique feature which provides the rationale of our answer to your question.

Section 56-1-2, N.M.S.A., 1953 Compilation (P.S.), reads as follows:

**"In conformity with national policy and law,** Veterans' Day the eleventh of November every year, in commemoration of the cessation of hostilities of every international armed conflict in which the United States has been engaged, is hereby declared to be a legal holiday." (Emphasis added).

In our view, the underlined portion of the above-quoted statute necessitates an examination of national policy and law in regard to Veterans' Day when, as in 1961, November 11th falls on a Saturday.

National policy on this issue is reflected in Senate Report No. 830, August 27, 1959, U.S. Code Congressional and Administrative News (1959) p. 2801, as follows:

"This legislation [bill making Friday a holiday if the designated date falls on Saturday] does not establish any new or additional legal holidays. It does not give any Federal employee any right, privilege, or benefit not clearly intended under existing law. It will cause no interference or delay in the operations or services of any Government department or agency."

"This bill merely closes a gap in the law which has continued largely due to oversight and has been brought to special attention because, under existing law, hundreds of thousands of Federal employees would have received, except for a Presidential Executive order, only six days off to observe legal holidays in 1959 instead of the eight legal holidays which they had a right to expect . . ."

"In short, the loss of holidays may be said to be due to accident of the calendar which was not taken into consideration when the Congress laid down the policy of eight legal holidays each year for Federal employees."

"It has been the almost universal impression that under present holiday laws each and every Federal employee receives eight legal holidays every year. In other words, it has become a generally accepted understanding that such employees are excused from duty on eight specified days each year, to observe and commemorate historic or religious occasions, apart and aside from those days in each week on which they are not scheduled to perform duties."

"Contrary to general impression, however, many Federal employees are deprived of the benefit of the full number of eight annual legal holidays in any year during which one or more of the holidays fall on Saturday."

". . . Necessary governmental functions will not be interrupted as a result of this legislation. Management, of course, will take all possible measures to provide adequate service at a minimum cost through appropriate assignment of employees, the granting of compensatory time off where suitable, and careful planning of work schedules."

After hearing this succinct committee report, Congress in 1959 enacted the following as national law (5 U.S.C. § 87 (a):

"If any such day [any one of the eight specified holiday dates] shall occur on a Saturday, the day immediately preceding such Saturday, shall be held and considered to be a legal public holiday, in lieu of such day which so occurs on such Saturday."

In view of the self-executing mandate by the New Mexico Legislature that our treatment of Veterans' Day is to be "in conformity with national policy and law", our conclusion is that Friday, November 10th was indeed a legal holiday for State employees as it was for Federal employees.

Now, inasmuch as the employees of the various State agencies and departments worked on November 10th, certain department heads decided to grant compensatory time off for this day under the provisions of the 1959 Personnel Policy plan issued by the New Mexico Personnel Department. This plan is generally used as a guide on such matters by agencies which are exempt by law from the 1961 Personnel Act. The provision utilized is as follows:

"Employees who are required to work on any approved holiday with pay shall be compensated by equivalent time off in accordance with the policy governing overtime."

Based on the above, it is our opinion that you should pay State employees who did not take November 10, 1961, as a holiday but who were given a compensatory day off on November 24, 1961, by the head of the agency.