

Opinion No. 61-28

April 7, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Boston E. Witt, Assistant Attorney General

TO: Mr. Donald C. Davidson, Director of Personnel, State Capitol, Santa Fe, New Mexico

QUESTION

QUESTION

You have submitted a list of State agencies, departments, commissions, boards and institutions and ask our opinion as to which of these are subject to the new Personnel Act passed by the 25th Session of the Legislature, being Chapter 240, Laws of 1961, being House Public Affairs Substitute for H. B. 25, H. B. 144 and H. B. 162.

CONCLUSION

See analysis.

OPINION

ANALYSIS

The criterion set forth in the above-mentioned Act which determines which agencies, etc., are subject to the Act is found in Section 4 and covers all State positions except:

1. Officials elected by popular vote or appointed to fill vacancies in elective offices except for the governor, and employees unless the elected officials elect to have their employees covered by the Act.
2. Members of boards and commissions and heads of agencies appointed by the governor.
3. Heads of agencies appointed by boards or commissions appointed by the Governor.
4. Those in educational institutions and in public schools.
5. Those in the Governor's office.
6. Those in the State Militia or State Police.
7. Those in the judicial branch of the government.

8. Those in the legislative branch of government.

9. Not more than two assistants in the office of each elected official and in the office of each head of an agency and one secretary in the office of each gubernatorial appointee who serves in a full time capacity.

10. Those of a professional or scientific nature which are temporary in nature.

11. Those of an emergency nature where the term of employment does not exceed 90 days.

12. Those filled by patients or inmates in charitable, penal or correctional institutions.

The list you have submitted is as follows:

Accountancy Board

Adjutant General

Architects Examiners Board

Armory Board

Attorney General

Auditor

Bank Examiner

Bar Commission

Bar Examiners Board

Barber Examiners Board

Board of Osteopathy Examiners

Basic Science Board

Board of Finance, State

Board of Professional Engineers and Land Surveyors

Boys' Industrial School

Bureau of Mines and Mineral Resources

Capitol Buildings Improvement Commission

Capitol Custodian

Carrie Tingley Hospital

Cattle Sanitary Board

Chiropractic Examiners Board

Civil Air Patrol

Collection Agency Board

Commission on Alcoholism

Commission on Uniformity of State Laws

Compilation Commission

Commission on Indian Affairs

Contractors License Board

Corporation Commission

Cosmetology Board

Courtesy and Information

Criminal Code Study Committee

Dairy Industry Indemnity Board

Dental Examiners Board

Department of Agriculture

Department of Development

Department of Education

Department of Finance and

Administration

Department of Game and Fish
District Judges
Dry Cleaning Board
Eastern New Mexico University
Educational Finance Board
Educational Retirement Board
Electrical Administrative Board
Embalmers and Funeral Directors Board
Employment Security Commission
Fair Employment Practices Commission
Fire Marshal
Fish and Wildlife Service
Forest Conservation Commission
Girls' Welfare Home
Governor's Veterans Approval Committee
Governor (Staff)
Grasshopper Control Board
Highlands University
Highway Department
Interstate Streams Commission
Intertribal Indian Ceremonial
Institute of Mining and Technology
Labor and Industrial Commission

Land Office, State

Law Library, State

Legislature

Legislative Council

Legislative Fiscal Analyst

Liquified Petroleum Gas Commission

Lieutenant Governor (Staff)

Los Lunas Hospital and Training School

Medical Examiners Board

Merit System Council

Mine Inspector

Miners' Hospital

Motor Vehicle Department

Museum of International Folk Art

Museum of New Mexico

New Mexico Historical Society

New Mexico Military Institute

New Mexico School for the Deaf

New Mexico State University

New Mexico School for the Visually Handicapped

New Mexico Western University

Northern New Mexico Normal

Nursing Board

Office of Civil Defense Mobilization
Oil Conservation Commission
Oil and Gas Accounting Commission
Old Lincoln County Memorial Commission
Optometry Examiners Board
Park Commission, State
Parole Board
Penitentiary
Personnel Office
Physical Therapist Licensing Board
Planning Office, State
Plumbing Administrative Board
Podiatry Board
Probation Officer
Public Employees Retirement Board
Public Health, State Department of
Public Service Commission
Public Welfare, State Department of
Racing Commission
Real Estate Board
Revenue, Bureau of
Secretary of State
Sheep Sanitary Board

Soil Conservation Committee

State Bar

State Engineer

State Fair Commission

State Hospital

State Investment Council

State Library Commission

State Police

State Purchasing Agent

State Records Center

State Treasurer

Supreme Court

Supreme Court Building Commission

Superintendent of Insurance and Insurance Board

Superintendent of Weights and Measures

Surplus Property Agent

Tax Commission, State

Traffic Safety Commission

Tuberculosis Hospital

University of New Mexico

Veterans Service Commission

Veterinary Examiners Board

Vocational Education Board

Vocational Rehabilitation Division

Youth Commission

Of this list, we are of the opinion that the following agencies and departments are exempt from the Personnel Act if they elect to so exempt themselves:

Attorney General

Auditor

Corporation Commission and the following departments thereunder

Fire Marshal

Superintendent of Insurance

Insurance Board

Department of Education, and the following divisions thereunder

Vocational Education Board

Vocational Rehabilitation

Division

Surplus Property Agent

State Land Office

Lieutenant Governor

Secretary of State

The following agencies, departments, etc., are exempt from the Personnel Act because of specific exemptions contained in Section 4 of the Act:

Adjutant General

Criminal Code Study Committee

Eastern New Mexico University

Governor's Staff

Highlands University

Institute of Mining and Technology

Law Library

Legislature

Legislative Council

Legislative Fiscal Analyst

New Mexico Military Institute

New Mexico School for the Deaf

New Mexico State University

New Mexico School for the Visually Handicapped

New Mexico Western University

Northern New Mexico Normal

State Police

Supreme Court

University of New Mexico

The following departments, agencies, offices, etc., are exempt from the Personnel Act because, in our opinion, they are either (1) not State positions within the meaning of the Act or (2) they are not official State agencies within the meaning of the Act:

District Judges

New Mexico Historical Society

Probation Officers

It should be noted under Section 4 of the Act, certain positions within departments subject to the Personnel Act are made exempt from the provisions of the Act. We have not attempted to set forth those individual positions within the departments. We have merely set forth departments and divisions as a whole which we deem subject or exempt from the Act.