

Opinion No. 62-19

January 29, 1962

BY: Opinion of EARL E. HARTLEY, Attorney General Boston E. Witt, First Assistant Attorney General

TO: Mr. K. Ross Toole, Director, Museum of New Mexico, P. O. Box 1727, Santa Fe, New Mexico

QUESTION

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Are the four Associate Directors of the Museum of New Mexico exempt from the Personnel Act under Section 4C?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 4 of Chapter 240, Laws of 1961, being the Personnel Act, provides for coverage of service and includes all state positions except:

"C. **heads of agencies** appointed by boards or commissions appointed by the governor."

Section 4-12-7.1, N.M.S.A., 1953 Compilation (P.S.), sets forth the powers of the Board of Regents of the Museum as follows:

"The board may:

* * * *

G. Employ associate directors and such personnel as necessary to run the museum."

We note from this section that the power to hire and fire Associate Directors and for that matter all museum employees is vested in the Board of Regents and not in the Director of the agency as is the normal case.

The question to be resolved, therefore, is whether the Director and all four Associate Directors come within the exclusion in subsection C set forth above as "heads of

agencies". We are led to the conclusion that such is the case. When the Legislature used the words "heads of agencies" rather than the "head of agencies", it seems relatively clear to us that they intended to exempt all heads of agencies if, in fact, an agency is controlled by more than one person which appears to be the case with the Museum of New Mexico. If it were the intent of the legislature to vest complete control of the Museum of New Mexico in a Director hired by the Board of Regents, it would have provided that the Director was to employ the Associate Directors. Such, however, is not the case. Section 4-12-7.1, supra, specifically provides that the Director and Associate Directors shall be hired by the Board of Regents and we, therefore, have a situation where an agency is controlled by several heads responsible directly to the Board of Regents rather than the normal case where Associate Directors would be answerable to the Director who, in turn, would answer to the Board of Regents. On this basis and on the basis of the use of the word "heads" in the plural in the Personnel Act in subsection C above, we conclude the legislature intended to provide an exemption from the Personnel Act in the case where an agency is controlled and operated by more than one "head".