

Opinion No. 62-73

June 19, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General J. E. Gallegos, Assistant Attorney General

TO: John S. MacKay, Business Manager, New Mexico School for the Deaf, 1060 Cerrillos Road, Santa Fe, New Mexico

QUESTION

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May an employee of the New Mexico School for the Deaf be paid his regular wages for time spent on jury duty?

CONCLUSION

See analysis.

OPINION

ANALYSIS

We find no statute providing that state employees, generally, are to receive their regular pay while absent from employment to serve on a jury. On the other hand, there is a certain prohibition to public money being paid for wages where services are not in fact rendered. This is found in Section 40 - 8 - 2, N.M.S.A., 1953 Comp., which reads:

"RECEIVING OR PAYING PUBLIC FUNDS FOR SERVICES NOT RENDERED -- PENALTY. -- Except in the case of payments covering lawful vacation periods and absences from employment because of sickness, any person who receives payment, or any person who makes payment or causes payment to be made from public money where such payment purports to be for wages, salary, or other return for personal services and where such personal services have not in fact been rendered shall be guilty of a felony and shall be punished by a fine of not less than one thousand dollars (\$ 1,000.00) nor more than five thousand dollars (\$ 5,000.00) or by imprisonment for not less than one [1] year nor more than two [2] years, or by both such fine and imprisonment."

Your attention is directed to the exception made in the statute for "payments covering lawful vacation periods".

As you know, the New Mexico School for the Deaf is not subject to the Personnel Act (Opinion of Attorney General No. 59-151, issued September 29, 1959). Rather, the

control of its employees and the appropriations for the School are placed in the hands of the Board of Regents of that School under Section 73-24-3, N.M.S.A., 1953 Comp. (PS). The same statute authorizes the Board to make rules and regulations governing the institution.

Thus, we think the question boils down to an administrative decision. If the Board of Regents decides that time spent by the School employees on jury duty will be "vacation periods", then we believe payment of wages during such absence is not prohibited by Section 40-8-12, N.M.S.A., 1953 Comp. And we find no other statutory obstacle.

Though New Mexico School for the Deaf employees are not subject to the New Mexico State Personnel Board rules, we point out one of those rules as a possible guide. Rule IX, Section D., paragraph No. 1, provides that when an employee of a state agency under the Personnel Act (Ch. 205, Laws 1959) is on jury duty, he shall be entitled to leave with pay. It provides further that fees received by the employee for so serving, not including reimbursement for transportation, shall be turned over to the employing agency.

In conclusion, it is our opinion that the duly constituted Board of Regents of the School for the Deaf is authorized to make the decision in each case according to its sound judgment. It may, or it may not, designate absence of a School employee for jury duty as a vacation period during which time the employee will receive regular pay.