

Opinion No. 63-143

October 29, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Col. C. L. Mears Superintendent New Mexico Boys' School Springer, New Mexico

QUESTION

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Are teachers on the staff of the New Mexico Boys' School required to be paid on a monthly or semi-monthly basis?

CONCLUSION

Teachers at the Boys' School must be paid semi-monthly.

OPINION

{*322} **ANALYSIS**

Two legislative provisions bear in part upon the question presented. Sections 73-12-4, N.M.S.A., 1953 Compilation (enacted by Laws 1923, Chapter 148, § 1108), sets out:

"All certificates issued prior to the passage of this act shall remain in force during their prescribed terms but shall not be renewed except under such conditions as may be prescribed by the state board of education. The salary per month shall be computed and paid on the basis of the months school is actually taught in the district during the term. All teachers shall be paid monthly."

Section 5-4-5, N.M.S.A., 1953 Compilation (Laws 1933, Chapter 157, § 1) provides as follows:

{*323} "It is hereby provided that all persons employed by and on behalf of the state of New Mexico, except those employed by institutions of higher education, including all officers, shall receive their salaries or wages for services rendered, at least semi-monthly, and that the payment of said salaries and wages shall be paid to said persons so employed within not to exceed sixteen days from the date of payment of the next preceding payment of said salaries or wages."

Section 5-4-5, above quoted, was amended in 1961 to add the provisions requiring semi-monthly payment of employees. This statutory enactment was previously construed in Attorney General's Opinion No. 59-23, dated March 9, 1959, wherein it was

held that Section 5-4-5 was controlling as to the time of payment of county employees as well as state employees.

Examination of the title to the 1961 Amendment reveals some discrepancy between the title of the mandatory act and the contents of the Act. The title sets out as follows:

"AN ACT RELATING TO THE TIME OF PAYMENT OF SALARIES AND WAGES FOR THOSE EMPLOYED BY THE STATE OF NEW MEXICO, **AND THE POLITICAL UNITS THEREOF**; AMENDING SECTION 5-4-5 NEW MEXICO STATUTES ANNOTATED, 1953 COMPILATION (BEING LAWS 1933, CHAPTER 157, SECTION 1), TO PERMIT BIWEEKLY PAYMENT; AND DECLARING AN EMERGENCY."
(Emphasis supplied).

In the body of the above Act reference is made only to employees of the State of New Mexico and no specific reference is made to the employees of political subdivisions of the State, although the title refers to employees of political units of the State.

The problem here considered involves three statutory rules of construction. First, if at all possible, two statutes must be interpreted together so as to give meaning to both laws. **Bartlett v. U. S.**, 166 Fed. 920; **Mendoza v. Acme Transfer & Storage Co.**, 66 N.M. 32, 340 P. 2d 1080. Second, if it is impossible to construe such legislative provisions together harmoniously, a repeal by implication may arise whereby the earlier statutes, to the extent of any conflict, is superseded by the provisions of the later statute. **Stokes v. New Mexico State Bd. of Ed.**, 55 N.M. 213, 230 P. 2d. 243; **State v. Valdez**, 59 N.M. 112, 279 P. 2d 868; **Alvarez v. Bd. of Trustees of La Union Townsite**, 62 N.M. 318, 309 P. 2d. 989. Third, an act treating a subject specifically will govern over a general provision to the extent of such repugnancy unless it is possible to reconcile the provisions of the two acts. **Waltom v. City of Portales**, 42 N.M. 433, 81 P. 2d. 58; **Levers v. Houston**, 49 N.M. 169, 159 P. 2d 761.

Applying the above rules of statutory construction to the question presented herein, it is apparent that the provisions of Section 5-4-5, N.M.S.A., can be harmoniously construed together with the provisions of Section 73-12-4, N.M.S.A., if the provisions of Section 73-12-4 are interpreted to have application only to teachers in public schools and who are not employed by state institutions or agencies. Section 5-4-5, supra, specifically excepts **institutions of higher education** from the requirement of paying their employees semi-monthly but all other **state** employees must, under the law be paid semi-monthly. When interpreted in this light, meaning and force can be given to both statutes without nullifying one or the other of the provisions of the two enactments.

{*324} Under the legal reasoning stated supra, it is therefore our opinion that employees of the New Mexico Boys' School at Springer since they are state employees are required to be paid semi-monthly under the provisions of Section 5-4-5, N.M.S.A., and that teachers in public schools who are not employed by state institutions (except state institutions of higher education) or agencies are to be paid monthly as stated in Section

73-12-4, N.M.S.A., 1953 Compilation. To the extent that this opinion conflicts with Opinion No. 59-23, supra, the latter is hereby overruled.

By: Thomas A. Donnelly

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