

Opinion No. 63-126

September 23, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

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

QUESTION

QUESTION

May the New Mexico Boys' School properly send one of the employees of the institution to the State of Washington for a period of one month for indoctrination in the duties of a Youth Forestry Camp Director so that such employee may assist the New Mexico Boys' School in managing a forestry camp for boys established in New Mexico?

CONCLUSION

Yes.

OPINION

{*284} **ANALYSIS**

In our opinion, the Board of Trustees for the New Mexico Boys' School may properly designate and direct that one of its employees receive training and indoctrination in another State concerning the duties and methods of operation of youth forestry camps.

In arriving at this conclusion consideration has been given to the provisions of Section 40A-23-2, N.M.S.A., 1953 Compilation, which states as follows:

"Paying or receiving public money for services not rendered consists of knowingly making or receiving payment or causing payment to be made from public funds where such payment purports to be for wages, salary or remuneration for personal services which have not in fact been rendered.

Nothing in this section shall be construed to prevent the payment of public funds where such payments are intended to cover lawful remuneration to public officers or public employees for vacation period or absences from employment because of sickness, or for other lawfully authorized purposes.

Whoever commits paying or receiving public money for services not rendered is guilty of a fourth degree felony."

The above statute permits leaves of absences from employment for certain authorized purposes. The instant situation involves in effect, a leave of absence from the employee's regular employment for purposes of obtaining certain training and indoctrination at State expense. Thus, pursuant to such statute the governing Board of the New Mexico Boys' School may, by passage of a resolution, authorize such employee to take leave of his customary duties and to attend a forestry camp in the State of Washington and receive instruction and familiarization as to the manner and operation of such forestry youth camps in order to utilize such skill and knowledge in connection with operating a State supported forestry camp for boys in New Mexico.

It is evident that in such case a direct benefit would result to the State by reason of the individual's obtaining from another State a familiarity and acquaintance with the methods of operating a boys' forestry camp and obtaining ideas {285} for resolving many of the problems inherent to such forestry camps. Since a direct benefit will issue to the State of New Mexico from such individual's training, the payment of travel expenses, regular salary, and per diem would not constitute a donation prohibited by Article IX, Section 14, of the State Constitution, and in our opinion, such training indoctrination would not contravene any state law.

By: Thomas A. Donnelly

Assistant Attorney General