

## Opinion No. 63-90

August 6, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** Mr. Harold S. Bibb State Personnel Director State Capitol Santa Fe, New Mexico

### QUESTION

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Have the following departments of the Museum of New Mexico been established as "divisions" by legislative enactment: Anthropology, Fine Arts, Folk Art and History?

#### CONCLUSION

No, but see analysis.

### OPINION

#### {\*196} ANALYSIS

An examination of the statutes dealing with the Museum of New Mexico establishes that the Departments of the Museum named above have not been made "divisions" by legislative enactment. Section 4-12-1, et seq., N.M.S.A., 1953 Compilation.

However, for purposes of coverage under the Personnel Act it is also necessary to determine whether these departments were administratively established as "divisions" prior to the 1963 amendment of the Personnel Act. If they were, the head of each such division **and** two of his assistants are exempt from coverage under the Personnel Act. Opinion Nos. 63-27 and 63-33.

{\*197} In determining whether these departments are "divisions" for purposes of Personnel Act coverage it is well to keep in mind that there is nothing magic in the word "division." Whether a subdivision of a governmental agency be called a unit, a department, a bureau, or something else, is not the determining factor. Rather than nomenclature, the critical determination is whether the "department" or "unit" is a major component within the internal administrative framework of the state agency, with certain policy making powers vested in the head of that "unit". If so, the department or unit is a "division", and the division head, as well as two assistants to the division head, are completely exempt from coverage under the Personnel Act.

We have examined the many reports of the Museum of New Mexico which are on file in the Supreme Court Library, and they establish beyond doubt that the Departments of Anthropology, Fine Arts, Folk Art and History have **at least** the status of divisions for

purposes of Personnel Act coverage. The annual reports of the Museum of New Mexico not only list the name of the Associate in charge of each of these departments but also include a separate report from each such associate.

By: Oliver E. Payne

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