

Opinion No. 64-101

August 4, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Frank Bachicha, Jr., Assistant Attorney General

TO: Harry L. Lester, Senior Budget Analyst, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

QUESTION

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May an organization of state government reimburse a prospective employee for all or any part of expenses incurred in traveling to and from a job interview?

CONCLUSION

No.

OPINION

ANALYSIS

The New Mexico Statutes providing for reimbursements of expenses incurred for travel and subsistence make specific reference either to the classification "Public Officers and Employees" or to specifically named public officials. For instance, Section 11-1-9, N.M.S.A., 1953 Compilation (P.S.) is entitled "Public Officers and Employees -- Expense For Travel Restrictions -- Exemptions." Section 18 of the General Appropriations Act, Laws 1963 reads in part as follows:

"Section 18. Travel Expenses. -- The state board of finance shall allow in lieu of actual expenses of subsistence and lodging **for official travel of** public officers and employees an amount" (Emphasis added).

See also Sections 15-40-21.1, 15-40-21.2, 15-43-11.1, 15-43-24, 16-3-33, 16-3-47, 17-1-3, 5-10-1, to 5-10-5, N.M.S.A., 1953 Compilation.

Attorney General Opinion No. 57-202, dated August 15, 1957, dealt with a problem very similar to the one involved herein. By this Opinion the Museum of New Mexico was denied the right to reimburse a job applicant for travel expenses incurred to and from the place of interview. The basis for such conclusion was that no provision of the law would authorize such an expenditure. We believe the same holds true in the instant case and find further that not only is there no authorization for making such

reimbursement, but there is an absolute prohibition therefore in Article IX, Section 14 of the New Mexico Constitution which provides as follows:

"Section 14. (Aid to private enterprise.) **Neither the state**, nor any county, school district, or municipality, except as otherwise provided in this Constitution, **shall directly or indirectly lend** or pledge its credit or **make any donation to or in aid of any person**, association or public or private corporation or in aid of any private enterprise for the construction of any railroad, provided nothing herein shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons." (Emphasis added.)

We entertain no doubt that the foregoing Section is directly applicable to the type of payment set forth in your question. Therefore, we are compelled to conclude that any such reimbursement for all or any part of expenses incurred by a prospective employee in traveling to and from a job interview would be contrary to law. Certainly, we realize that as a practical matter State Agencies and Departments will encounter difficulty in securing job applicants for interviews, and especially those with technical training, if reimbursement for travel expenses cannot be furnished. However, under the circumstances we are not at liberty to render our opinion based purely upon such a consideration.