

**Opinion No. 64-121**

September 21, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

**TO:** R. F. Apodaca, Superintendent of Insurance, State Corporation Commission, Santa Fe, New Mexico

**QUESTION**

QUESTION

The General Appropriation Act for the fiscal year beginning July 1, 1964, provides that "insurance department personnel shall have qualifications as established by the superintendent of insurance."

Does this mean that all insurance department personnel are exempt from coverage under the Personnel Act?

CONCLUSION

No.

**OPINION**

ANALYSIS

The Personnel Act, which was amended in 1963, provides in Section 5-4-31, N.M.S.A., 1953 Compilation (P.S.) that all state positions are covered except for the enumerated exemptions. It further provides in Section 5-4-36, N.M.S.A., 1953 Compilation (P.S.), which section was also amended in 1963, that the Personnel Board shall promulgate rules setting up "a classification plan for all positions in the service."

It is our opinion that the Personnel Act can be harmonized with the provision in the General Appropriation Act that "insurance department personnel shall have qualifications as established by the superintendent of insurance." Such a provision does not irreconcilably conflict with the Personnel Act classification plan provision. We suggest that the Superintendent of Insurance set minimum qualifications and meet with the Personnel Director in regard to these or other qualifications for insurance department personnel so that a conflict does not subsequently develop.

As we understand it the question arose in connection with certain salary increases since the General Appropriation Act also provides that "Increases in salaries for personnel in the state executive branch who are not under the state personnel system shall be made

not more than once every twelve (12) months and shall be subject to the approval of the department of finance and administration." For this reason you need to know whether all employees of the insurance department are exempt from Personnel Act coverage.

All such employees are not exempt. On the contrary they are all covered except those, if any, which have been properly exempted under the provisions of Section 5-4-31, supra, of the Personnel Act.