

Opinion No. 65-170

August 31, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Wayne C. Wolf, Assistant Attorney General

TO: Mr. W. J. Upton, Commissioner of Banking, 113 Washington Avenue, Santa Fe, New Mexico

QUESTION

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Is a permanent employee entitled to have his accrued leave transferred when he transfers his employment from one agency to another if the agency to which he is transferring does not desire to accept the leave?

CONCLUSION

Yes, but see analysis.

OPINION

{*284} ANALYSIS

The matter of transfers of employees and of accrued annual leave and sick leave is treated solely in rules promulgated by the New Mexico State Personnel Board. Rule 703.2 provides that there will be no transfer of employees unless both the transferring and receiving agency consent to the transfer. Once the transfer is accomplished, however, two specific rules state that the annual and sick leave which has been accumulated by the employee shall be transferred to the receiving agency. Rule 703.4 reads:

"When an inter-agency transfer is made, accumulated sick and annual leave of a transferred incumbent shall be transferred to the receiving agency. No transfer of compensatory leave shall be authorized."

Rule 905 provides:

"Accumulated sick and annual leave of a transferred incumbent shall be transferred to the receiving agency. No compensatory leave shall be transferred."

From these rules we can only conclude that two participating agencies have to consent before an inter-agency transfer of the employee may be accomplished, but there is no

choice on transferring the accumulated sick and annual leave. The language employed by the rule is clear and is mandatory.