

Opinion No. 65-188

September 23, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Robert E. Kirkpatrick, Chief, Financial Control Division, Department of Finance & Administration, State Capitol Building, Santa Fe, New Mexico

QUESTION

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May members of the Board of Bar Examiners be paid for services rendered in drafting bar examination questions?

CONCLUSION

Yes.

OPINION

{*306} ANALYSIS

Section 18-1-24, N.M.S.A., 1953 Compilation provides ". . . no member of the board [of bar commissioners] or any committee appointed by the board shall receive any compensation, but shall be paid only his actual, necessary expenses connected with attending regular meetings or special meetings of said board or committee duly called by the board or under its authority."

This limitation, we believe, goes only to duties which are by law imposed on the board. It does not preclude the payment of compensation for professional services which the board member is not required to perform as a part of his official duties.

It must also be kept in mind that the Board of Bar Commissioners is not the same as the Board of Bar Examiners. The latter Board, while a **special** committee of the Board of Bar Commissioners, is appointed by the Board of Bar {*307} Commissioners **with the approval of the Supreme Court**. Section 18-1-8, 1953 Compilation. Neither the statutes nor the rules of the Board of Bar Commissioners require the Board of Bar Examiners to draft the written bar examination questions.

Rule 13 of the Board of Bar Commissioners imposes the duty on the Board of Bar Examiners to examine candidates for admission to the Bar.

Neither do the rules of the Board of Bar Examiners require that the Board prepare written bar examination questions. Rule 29 provides as follows:

"The Board of Bar Examiners may utilize the services of expert draftsmen to prepare bar examination questions, either by arranging for the drafting services of qualified persons including out-of state law teachers, or by using the services of the National Conference of Bar Examiners or other national agency. Before a question is accepted for use in a bar examination, whether drafted by the examiners or by expert draftsmen, every point of law in the question shall be analyzed and approved by the Board of Bar Examiners."

Even if the Board of Bar Examiners is the type of committee of the Board of Bar Commissioners contemplated by Section 18-1-24, supra, which is somewhat doubtful since the Supreme Court must approve appointments to the Board of Bar Examiners and since Rule 8 of the Board of Bar Commissioners sets forth the various committees (and the Board of Bar Examiners is not named therein), a member of the board of bar examiners who does prepare bar examination questions under contract with the Board of Bar Examiners may be compensated therefor. He is not, in such capacity, performing a duty imposed on him by law.