

Opinion No. 66-36

March 25, 1966

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

TO: C. R. Sebastian, Director, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

QUESTION

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Were all proper legal procedures followed in the reclassification and salary increase for the Budget Director of the Department of Finance and Administration?

CONCLUSION

Yes.

OPINION

{*44} ANALYSIS

We have reviewed the complete file on this matter and have determined as follows: The present Budget Director of the Department of Finance and Administration, Mr. Ben D. Mason, was promoted (or reclassified) effective January 1, 1966. This action was approved by the Director of the Department of Finance and Administration and the Governor on **January 31, 1966**. The certification was received by the Budget Division of the Department of Finance and Administration on this same date.

As this office pointed out in Opinion No. 62-28, service by State employees is on a monthly basis. Accordingly, "a pay increase can be made effective as of the first day of the month in which the services are rendered." See also Attorney General Opinions 57-17 and 57-308.

The reason that the warrant for the increased pay was issued in February rather than January was that a supplemental payroll was not issued.

Your second question concerns the fact that the Budget Director (which, at this time, is a position exempt {*45} from the Personnel Act) has had a raise within the previous calendar year. This creates no legal problem inasmuch as the raise granted to the Budget Director was based upon a reclassification and the imposition of additional duties.

The Chief of the Budget Division has been given the following additional duties as shown by the "recommendation for personnel action":

"Chairman and director of Institutional Council."

At the request of the Governor it is stated as follows in the recommendation for personnel action:

"Mr. Mason will assume additional duties and responsibilities as chairman and director of the institutional council."

When an exempt State employee is reclassified, which is not an unusual situation, he is entitled to the salary that the employing agency dictates, which, in this case, was set at \$ 15,900 for this exempt position.

We conclude, therefore, that the procedures followed in the reclassification and salary increase for the Budget Director were proper in all respects.