

Opinion No. 66-82

June 28, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Paul J. Lacy, Assistant Attorney General

TO: Mr. Frank McGuire, Director, State Division of Economic Opportunity, State Capitol Building, Santa Fe, New Mexico

QUESTION

FACTS

The Gadsden Independent Schools at Anthony, New Mexico, are planning to undertake an after-school Head Start Project next school year, conducted from 3:00 to 5:00 in the afternoon. The regular Gadsden primary teachers will be doing the teaching in this program. The assistant superintendent assures us that there are no duties for any of the primary school teachers after the hour of 3 o'clock in the afternoon. He says that any of these teachers could go home at this time.

QUESTION

May those teachers which participate in the Head Start Program outlined in the facts above receive extra compensation for these services?

CONCLUSION

Yes, under this specific fact situation.

OPINION

{*109} ANALYSIS

In a recent opinion issued by this office, Attorney General Opinion No. 66-32, we considered whether a school employee who contracted to teach during a specific period of time could also be employed by a community action group to render services for a federal program **at the same time he is supposed to be rendering a service to the school district**. Under those facts, we determined that the employee would in fact be obligated to perform services for two employers at the same time during the day. This, we determined would create a physical impossibility of fully performing for both employers under the case of **Haymaker v. State**, 22 N.M. 400, 163 P. 248, 1917 D, 210.

However, the facts giving rise to this opinion are materially different from the facts in our earlier opinion. Here, it can be seen that the hours of employment in the Head Start

Program do not physically conflict with the hours of teaching during the regular school day. Also, it is of great importance that there is no preference given to any of the Gadsden primary school teachers whereby their regular duties will end at 3 o'clock in order that they may then be free to take up their Head Start Project duties. In fact, this Office has been told that **all** primary school teachers in the Gadsden schools are free to leave the school at least by 3 o'clock in the afternoon.

We have examined the standard teachers' contract forms which bear the approval of the State Board of Education, and which are the only forms which may be used under Section 73-12-14, N.M.S.A., 1953 Compilation (P.S.). We are of the opinion that the forms as they now exist would not prevent participation in an after-school Head Start Program such as this one.

Therefore, because the hours of the {*110} Head Start Project do not conflict physically with the hours of the regular school day and because there is no preferential treatment given to any of the primary school teachers in order that they may be free to teach in the Head Start Project, and because there is no incompatibility of duties, we are of the opinion that their participation in the Head Start Project planned for the next school year is permissible.