

**Opinion No. 67-20**

February 9, 1967

**BY:** OPINION OF BOSTON E. WITT, Oliver E. Payne

**TO:** Mr. Clay Buchanan Director New Mexico Legislative Council Legislative-Executive Building Santa Fe, New Mexico. Attention: Malvin D. Dohrman Attorney

**QUESTION**

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Is there any prohibition against the Cattle Sanitary Board paying its employees engaged in inspecting meat overtime pay or granting these same employees compensatory time-off for the extra hours worked?

CONCLUSION

No, providing the conditions set forth herein are met.

**OPINION**

{\*25} **ANALYSIS**

Section 5-4-36, N.M.S.A., 1953 Compilation, a portion of the Personnel Act of 1961, provides that:

"Rules promulgated by the board shall be effective when filed as required by law. The rules shall provide, among other things, for; . . .

B. A pay plan for all positions in the service; . . .

G. Hours of work, holidays and leave. . . ."

Such Rules apply to all State employees covered by the Personnel Act (Section 5-40-30, N.M.S.A., 1953 Compilation).

The Personnel Board has promulgated a number of Rules which bear on your question. First, there is Rule 219 which states:

"PAYMENT FOR OVERTIME -- Payment for overtime work, when authorized by the Department of Finance and Administration, shall be at the hourly rate equivalent to the salary range and step authorized for the normal work week of an incumbent. However, overtime work shall normally be compensated by equivalent time off."

Rules 908 and 908.1 provide as follows:

"908. COMPENSATORY LEAVE -- When directed by proper authority an incumbent with permanent status or serving under a probationary, provisional or temporary appointment may accumulate credit for working overtime, and may be granted equal compensatory leave at times convenient to the operation of the agency.

908.1. Maximum accrual of compensatory leave shall be ten (10) working days and such leave shall be taken within ninety (90) calendar days after accrual or it shall lapse, unless the appointing authority extends this time for the convenience of the agency."

Rule 1001.1 states:

"Hours of work required of an incumbent, in addition to the approved work week, shall be considered as overtime and shall be compensated as provided in Section 908 or Section 219. Overtime work must be authorized in advance by the appointing authority or his designated representative."

Rule 1003.1 also bears on your question, and provides as follows:

"An incumbent who is required to work on a statutory holiday or one designated by the governor shall accumulate one hour of compensatory {26} time for each hour of holiday work."

Lastly, we might mention Rule 905 which states:

"TRANSFER OF ACCRUED LEAVE. --

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

Of course, the rules adopted by any agency, board, bureau, commission or department must be within the statutory authority granted to the rule-making body. It is clear to us that the above Rules are within the statutory power of the Personnel Board to promulgate.

We will sum up briefly as follows:

1. **Overtime pay.** -- It may be paid if authorized in advance by the employer or his designated representative and approved by the Department of Finance and Administration. The rate is to be at the hourly equivalent of the salary range and step authorized by the normal work week of the person working overtime.

2. **Compensatory Leave.** -- Compensatory leave may be granted by an employer. As mentioned, only a maximum of ten days of such leave may be accumulated and it must

be taken within certain time periods unless exceptions to these deadlines are made as provided for in the above-mentioned Rules.

Deputy Attorney General