

Opinion No. 67-141

November 30, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Dewey A. Schluter, Jr. Director Department of Automated Data Processing
State Capitol Building Santa Fe, New Mexico

QUESTION

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1. Can the Department of Finance and Administration pay state employee wages one week in arrears?
2. Can the Department of Finance and Administration pay employee wages on Friday, January 12, 1968, for the first week of January ending on the 5th, and subsequently pay wages on alternate Fridays?

CONCLUSIONS

1. No.
2. No.

OPINION

{*227} ANALYSIS

Your two questions are interrelated and will be discussed together. The answer to each is to be found in Section 5-4-5, N.M.S.A., 1953 Compilation. This section provides as follows:

"Salaries and wages payable at least semimonthly. -- It is hereby provided that all persons employed by and on behalf of the state of New Mexico, except those employed by institutions of higher education, including all officers, **shall receive their salaries or wages for services rendered**, at least semimonthly, and that the **payment of said salaries and wages shall be paid to said persons so employed within not to exceed sixteen days from the date of payment of the next preceding payment of said salaries or wages.**" (Emphasis added).

There would be no legal prohibition from paying salaries or wages every second Friday. Under that system the employee would be paid semi-monthly with salary or wages being received every second Friday. Under that system the employee would be paid semimonthly with salary or wages always paid within the sixteen-day legislative

mandate. But to inaugurate a system whereby each employee would be paid one week in arrears would violate Section 5-4-5, supra. To pay employees on January 12th only for **services rendered** through January 5th and then pay them on January 26th only for the two preceding two weeks means that there is a twenty-one day period between the payment of salaries or wages **for services already performed**. This is clearly contrary to Section 5-4-5, supra.

By: Oliver E. Payne

Deputy Attorney General