

Opinion No. 67-19

February 7, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. J. Bayes Williams Acting Chairman-Executive Director Employment Security Commission 505 Marquette Avenue, N.W. Albuquerque, New Mexico 87103

QUESTION

FACTS

The University of New Mexico employs students in workstudy projects under the Economic Opportunity Act. Several students perform services for the Employment Security Commission. The Economic Opportunity Act provides ninety percent of the funds required to pay for these services. The University pays the remaining ten percent. The agencies receiving the student services are required to put up the ten percent matching money. In this case, the Employment Security Commission of New Mexico is required to put up the ten percent matching money. Under the Federal Act, colleges must provide the matching funds as soon as their proposal for a work study project is approved. The University desires that the Commission pay its share of the matching fund in advance of the work done. The Commission would pay the funds to the University. The University would hold the funds until the work was performed by the student. Upon performance of the work, the University would pay the student. If the work is not performed, the money is returned to the State Commission.

QUESTION

Under the above fact situation, is the advancement of moneys to the University prior to the performance by the students a violation of Section 40A-23-2, N.M.S.A., 1953 Compilation?

CONCLUSION

See Analysis.

OPINION

{*24} ANALYSIS

Section 40A-23-2, supra, states:

"Paying or receiving public money for services not rendered. -- Paying or receiving public money for services not rendered consists of knowingly making or receiving payment or causing payment to be made from public funds where such payment

purports to be for wages, salary or remuneration for personal services which have not in fact been rendered.

Nothing in this section shall be construed to prevent the payment of public funds where such payments are intended to cover lawful remuneration to public officers or public employees for vacation periods or absences from employment because of sickness, or for other lawful authorized purposes.

Whoever commits paying or receiving public money for services not rendered is guilty of a fourth degree felony."

It is the opinion of this office that this agreement should be entered into under the terms set out in the Joint Powers Agreement Act, Section 4-22-1 through 4-22-7, N.M.S.A., 1953 Compilation. The need for fiscal safeguards in this kind of agreement is obvious. It should be noted that under the terms of that Act, the terms and conditions of that agreement must be passed on by the State Board of Finance. The Joint Powers Agreement Act was specifically set up to take care of situations such as the one you set out in your letter. Accordingly, the agreement you enter into should be construed under the requirements of this Act, with appropriate fiscal safeguards.

By: Donald W. Miller

Assistant Attorney General