

Opinion No. 68-01

January 4, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Robert E. Kirkpatrick Deputy Director Department of Finance & Administration
State Capitol Santa Fe, New Mexico

QUESTIONS

When a state official's or state employee's salary is set by a specific appropriation, may the state pay the regular employer's share to the Public Employees' Retirement Association, the regular employer's share for social security, and the authorized amount for coverage under the state group insurance policy?

CONCLUSION

Yes.

OPINION

{*2} ANALYSIS

Section 5-5-1(G), N.M.S.A., 1953 Compilation, the definition section of the Public Employees' Retirement Association Act, states as follows:

"Employee' means any person, **including any elected official**, who is in the employ of any public employer and whose salary is paid by warrant or any other medium from any income of said public employer." (Emphasis added)

It is quite true that some elected officials have not chosen to become members of the Public Employees' Retirement Association. This is their option under Section 5-5-6, N.M.S.A., 1953 Compilation. However certain other elected officials are members of the Association. When such officials are members, Section 5-5-10, N.M.S.A., 1953 Compilation provides that each month the affiliated public employer "on the first day of each month shall pay into the employers' accumulation fund five percent of the regular salary of each member in its employ except police members, certain municipal police members and municipal fireman members". For the affiliated public employer to make these statutorily required payments does no violence to Article V, Section 12 of the New Mexico Constitution. That provision simply says that the compensation for services rendered by elected executive officials is in full payment for services rendered and that "they shall receive no other fees or compensation whatsoever." Even this provision could (and has been) changed "after the expiration of ten years from the date of the admission of New Mexico as a state."

Insofar as the employer's share of social security is concerned, the Federal-State agreement which became effective on January 1, 1955 requires that the state make such payments. This our own legislature agreed to, Section 5-7-3, N.M.S.A., 1953 Compilation. And the agreement states that "the term 'employee' means an employee as defined in Section 210(k) of the Social Security Act **and shall include an officer of the State or of a political subdivision**, thereof, and shall include all **Judicial and Executive Elective officers.**" Again, this is not the payment of additional fees or compensation to these officers. The same is true in the case of group insurance premiums paid by the state or any political subdivisions thereof pursuant to Section 5-4-12, N.M.S.A., 1953 Compilation.

By: Oliver E. Payne

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