

## **Opinion No. 69-47**

May 20, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Oliver H Miles, Assistant Attorney General

**TO:** Mr. Edward M. Hartman, Executive Officer, State Board of Finance, Legislative Executive Building, Santa Fe, New Mexico

### **QUESTIONS**

#### **FACTS**

An official court reporter was injured in February of 1969 and has been unable to perform his duties since that time. He will probably be able to return to work about June 15 or July 1, 1969. This reporter has been employed by the court since September of 1959 and has never taken time off for sick leave.

#### **QUESTIONS**

1. Is there a legal limitation on the amount of sick leave that can be given judicial employees?
2. If there is no such limitation, would an allocation from the State Court Fund be in violation of any existing statute?

#### **CONCLUSIONS**

1. See analysis.
2. No.

### **OPINION**

#### **{\*71} ANALYSIS**

There is no question but that official court reporters are fulltime employees of the court, N.M.S.A., 16-3-46 (1967 Pocket Supp.). They are appointed and serve at the discretion of the court. The court has the discretion to hire his reporter and to keep him employed so long as he is satisfied. We would think that this discretion extends to providing reasonable leave time for the employees. If the court has exercised such discretion in the past, then that policy should be followed. If no such policy has been promulgated, then the guidelines set forth in the State Personnel Regulations would provide a reasonable method of computing the amount of leave time to which the employee would be entitled.

It is clear that modern employment practices in virtually all fields make allowances for leave time for full-time employees. The State of New Mexico has made such allowances for its employees through the State Personnel Act (N.M.S.A., 5-4-28 to 5-4-46, 1953 Comp.). However judicial employees are specifically exempt from this Personnel Act (N.M.S.A., 5-4-31 G., supra). Therefore the regulations of the State Personnel Board have no binding force in providing leave time for judicial employees such as court reporters.

This does not mean, we think, that such regulations could not be used as guidelines in providing such leave time to exempt employees. Furthermore, the purposes underlying the exemption of certain classes of employees are not to preclude them from benefits such as vacation and sick leave.

We can find no statute which prohibits payments for sick leave to judicial employees and therefore think that any such reasonable allocation would not violate any existing statute.