

Opinion No. 71-07

January 25, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Richard Heim, Executive Director Health and Social Services Department Post Office Box 2348 Santa Fe, New Mexico 87501

QUESTIONS

QUESTION

May the Health and Social Services Department make retroactive payment for salary increases in January of 1971 which were originally authorized during the last six months of 1970?

FACTS

The Health and Social Services Board at its May 1970 meeting, voted to freeze all salaries of \$ 12,000 or more until additional funds became available. No action was taken to curtail increases earned by lower salaried employees. As the employee anniversary dates came up, appropriate personnel action was taken within the anniversary month to initiate step salary increases. Such actions, however, were not approved by the Department of Finance and Administration and the increases were never paid.

Apparently the department now finds that it has adequate funds to pay these authorizations or, in the alternative, anticipates a deficiency appropriation from the legislature which would be adequate to pay these authorizations.

CONCLUSION

No, the Department of Health and Social Services may not give retroactive pay increases to state employees.

OPINION

{*11} ANALYSIS

Attorney General Opinion No. 57-17 dated February 7, 1957, is dispositive of this question.

Article IV, Section 27 of the New Mexico Constitution provides that:

"No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; nor shall the compensation of any officer be increased or diminished during his term of office, except as otherwise provided in this Constitution."

For the purposes of this opinion, it is assumed, as it was in Attorney General Opinion No. 57-17, that the services for which employees would be given the retroactive pay increases have already been rendered.

In my opinion, you are prohibited from giving retroactive pay increases under the circumstances cited by you and the assumption I have made above.