

Opinion No. 71-111

October 1, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. John G. Jasper Attorney Legislative Council Executive-Legislative Bldg. Santa Fe, New Mexico 87501

QUESTIONS

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May a member of the board of trustees of a rural electric cooperative incorporated under New Mexico's Rural Electric Co-operative Act serve as the salaried director of the co-operative, and, if he may, are there statutory conditions that must be fulfilled as conditions precedent to his serving in such a salaried capacity?

CONCLUSION

Yes, with approval of the members.

OPINION

{*166} ANALYSIS

Section 45-4-9, N.M.S.A., 1953 Comp., a portion of the Rural Electric Cooperative Act, provides in pertinent part as follows:

"Without approval of the members, trustees shall not receive any salaries for their services as trustees and, except in emergencies, **shall not be employed by the co-operative in any capacity involving compensation.**" (Emphasis added.)

Over the years there has been a difference of opinion over whether the restriction on employment for compensation of a trustee by the co-operative is qualified by the phrase "without approval of the members."

Since 1965, when the question last arose, a number of things have happened to lead us to the conclusion that such employment is permissible if the members of the cooperative approve. First, Section 45-4-3, N.M.S.A., 1953 Comp., a portion of the Rural Electric Co-operative Act was amended by Laws 1971, Chapter 8 by adding the following new Paragraph R:

"pay pensions and establish pension plans, pension trusts, bonus plans, health insurance plans, savings plans, and any other incentive plans or employee relation

plans customarily **used by broadly held corporations, for its trustees, officers and employees**, or for its employees alone." (Emphasis added.)

Second, in 1967 the Legislature enacted the Business Corporation Act, Sections 51-24-1, et seq., N.M.S.A., 1953 Comp. which permits shareholders to be directors and managing officers of the corporation if such is so provided in the bylaws. See Sections 51-24-34 and 51-24-46, N.M.S.A., 1953 Comp. (P.S.).

We also note that in 1967 the bylaws of the Jemez Mountains Electric Cooperative were amended (after approval of the members) adding the words which we underline below:

"Section 8. Manager. The board of trustees may appoint a manager who may be, but who shall not be required to be, a member **or trustee** of the Cooperative. The manager shall perform such duties and shall exercise such authority as the board of trustees may from time to time vest in him." (Emphasis added.)

The statutory condition precedent to a trustee serving in the capacity of salaried manager of the cooperative is "approval of the members." In the case of the Jemez Mountains Electric Cooperative at least that precondition has been met.

By: Oliver E. Payne

Deputy Attorney General