

Opinion No. 72-44

September 7, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Ronald Van Amberg,
Assistant Attorney General

TO: Mr. Frank M. Olmstead, State Auditor, P. O. Box 2383, Santa Fe, New Mexico
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QUESTIONS

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May contracts employing new faculty members provide for the commencement of salary payments before teaching services are rendered?

CONCLUSION

No.

OPINION

{*73} ANALYSIS

Section 40A-23-2, NMSA, 1953 Comp. provides in part:

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. . . .

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

A teacher, even though bound by contract to perform future teaching services, who receives payment which "purports to be for wages, salary or remuneration for personal services **which have not in fact been rendered**" is in violation of the above statute. Similarly the public official involved in this transaction is also in violation. While the wisdom of the legislation might be in controversy, its meaning is clear in prohibiting the type of transaction your question describes.

It should be noted, however, that if a teacher's salary payments are received after the commencement of his or her services, the salary payments may be deferred and spread out to cover periods when services are no longer being performed.