

Opinion No. 73-29

March 16, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Anthony Lucero New Mexico State Senator
The Honorable William A. Sego New Mexico State Senator
Legislative-Executive Building, New Mexico 87501

QUESTIONS

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Whether House Bills 422 and 423 are constitutional.

CONCLUSION

No.

OPINION

{*50} ANALYSIS

House Bill 422 specifies:

"It shall be lawful for state higher educational institutions to pay reasonable moving allowances for newly hired personnel. The moving {*51} allowances hereby authorized are declared a form of compensation for services, not wages, and shall not be deemed a donation."

House Bill 423 specifies:

"It shall be lawful for state, county and municipal hospitals to supply medical expense reimbursement plans (including employee discounts) for hospital employees. Payments made or discounts granted hereunder are declared a form of compensation for services, not wages, and shall not be deemed a donation."

Article IV, Section 24 of the New Mexico Constitution prohibits the enactment of special laws. In **City of Raton v. Sproule**, 78 N.M. 138, 429 P.2d 336 (1967), the Supreme Court defined a "special law" as:

". . . one that relates to particular persons or things of a class, or is made for individual cases, or for less in a class of persons or things requiring laws appropriate to its particular condition and circumstances."

And see **Davy v. McNeill**, 31 N.M. 7, 240 P. 482 (1925); **Scarborough v. Wooten**, 23 N.M. 616, 170 P. 743 (1918); **State v. Atchison T. & S.F.Ry.**, 20 N.M. 562, 151 P. 305 (1915).

It is the judgment of the Office of the Attorney General that House Bills 422 and 423 violate Article IV, Section 24 of the New Mexico Constitution. By authorizing the payment of ". . . reasonable moving allowances for newly hired personnel . . ." of state higher educational institutions, House Bill 422 relates to particular persons of a class whose circumstances are not unique or distinguishable from those of newly hired personnel of any other state institutions or agencies. House Bill 423 likewise confers special benefits upon particular state, county and municipal employees whose circumstances are indistinguishable from those of other public employees.

The special or preferred treatment accorded to particular persons by House Bills 422 and 423 is not based upon pertinent or rational differences among public employees or employers and for this reason the legislation proposed by these bills is unconstitutional. See **State v. Sunset Ditch Co.**, 48 N.M. 17, 145 P.2d 219 (1944).

Furthermore, House Bill 422 is also of dubious validity in view of Article IX, Section 14 of the New Mexico Constitution which prohibits the state or any county, school district or municipality from making ". . . any donation to or in aid of any person . . ." Although this proposed legislation purports to create a form of compensation for services rendered, it does not limit payment of such compensation to individuals who have actually performed the services for which this form of compensation would be warranted.

By: Thomas L. Dunigan

Assistant Attorney General