

## Opinion No. 74-02

January 4, 1974

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Mr. Ray Davenport, Chairman Department of Corrections P.O. Box 1351  
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### QUESTIONS

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Should teachers employed by the Department of Corrections be classified as state employees under the State Personnel Act or should such employees retain their present status in exempt positions?

#### CONCLUSION

Teachers employed by the Department of Corrections should be classified as state employees under the State Personnel Act.

### OPINION

#### {\*3} ANALYSIS

Section 5-4-31, NMSA, 1953 Comp. (1973 P.S.), provides that the Personnel Act and the service cover all state positions except

"A. Officials elected by popular vote or appointed to fill vacancies in elective offices;

B. Members of boards and commissions and heads of agencies appointed by the governor;

C. Heads of agencies appointed by boards or commissions;

**D. Those in educational institutions and in public schools ;**

E. Those in the governor's office;

F. Those in the state militia or state police;

G. Those in the judicial branch of government;

H. Those in the legislative branch of government:

I. Not more than two [2] assistants and one [1] secretary in the office of each official listed in subsections A, B and C of this section, excluding members of boards and commissions in subsection D of this section;

J. Those of a professional or scientific nature which are temporary in nature;

K. Those filled by patients or inmates in charitable, penal or correctional institutions;

L. State employees, if the personnel board, in its discretion, decides that the position is one of policy making;

M. Disadvantaged youth under twenty-two [22]. . ."

The only listed exemption teachers working for the Department of Corrections would appear to fall under is that of employees working in educational institutions and in public schools. Thus the question to be determined here is whether teachers working for the Department of Corrections are in fact employed in "educational institutions and in public schools."

Article XII of the New Mexico State Constitution provides for a uniform system of free public schools in this State. Article XII, Section 6 creates a {"\*4"} "state department of public education" and a "state board of education." This board, pursuant to the Constitution, establishes public school policy and vocational educational policy and has control, management and direction of all public schools pursuant to authority and powers provided by law. Article XII, Section 11 sets forth state educational institutions and Section 13 provides for a board of regents at each institution which have the control and management of each said institution.

It is clear that teachers employed by the Department of Corrections are not under the control and management of either the boards of regents for each educational institution in this State or the state board of education. Therefore, it appears that these employees are not properly exempt employees and should be classified as employees under the State Personnel Act.

By: Leila Andrews

Assistant Attorney General