

**Opinion No. 80-39**

December 9, 1980

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Douglas Meiklejohn, Deputy Attorney General

**TO:** Kathleen R. Marr, Secretary, Department of Finance and Administration, 421 State Capitol, Santa Fe, New Mexico 87503

**PUBLIC OFFICERS AND EMPLOYEES**

The Department of Finance and Administration may implement the cost-of-living increase provided to State employees by Chapter 155, Section 5(1)(d) of the General Appropriations Act of 1980, on July 5, 1980 rather than on July 1, 1980.

**QUESTIONS**

May the Department of Finance and Administration implement the cost-of-living increase provided to State employees by Chapter 155, Section 5(1)(d) of the General Appropriations Act of 1980 on July 5, 1980 rather than on July 1, 1980?

**CONCLUSIONS**

Yes.

**ANALYSIS**

Chapter 155, Section 5(1)(d) of the Laws of 1980, the General Appropriations Act of 1980, with respect to cost-of-living increases:

"For a cost-of-living adjustment in the sixty-ninth fiscal year. Employees whose annual salary on July 1, 1980, is less than fifteen thousand dollars (\$15,000) shall receive an adjustment of ten percent. Employees whose annual salary on July 1, 1980, is more than fifteen thousand dollars (\$15,000) shall receive an adjustment of seven percent . . . ."

**OPINION**

This language does not mandate that the cost-of-living adjustments be implemented as of July 1. Rather, the Act requires only that the cost-of-living adjustments be implemented "in the sixty-ninth fiscal year." The July 1 date operates primarily as the cut-off date for determining whether an employee is entitled to a seven or ten percent increase.

Section 5(1)(d) of Chapter 155 also provides that the Department of Finance and Administration shall allocate the appropriation made for the adjustment to the various State agencies, and Section 10-7-2 NMSA 1978 of the Personnel Act provides that State employees shall be paid pursuant to Department regulations. Although the Department has not promulgated any regulations pertaining to implementation of cost-of-living adjustments, those two acts indicate that the Department may implement the cost-of-living adjustments at the beginning of the first pay period in the sixty-ninth fiscal year.

The cost-of-living adjustment was apparently implemented on July 5 because that was the date beginning a pay period which was closest to the beginning of the sixty-ninth fiscal year, July 1, and this is the policy which the Department has followed since the change from semimonthly to bi-weekly pay periods six years ago. Cost-of-living adjustments were implemented on July 7, 1979, June 24, 1978, June 25, 1977, {\*198} June 26, 1976, and June 28, 1975. In 1975, 1976, and 1977, the cost-of-living adjustment was not mentioned in the General Appropriations Act. The amount necessary for the adjustment was appropriated to each agency in its budget, and the adjustment was implemented by the Department. The appropriations acts for 1978 and 1979 both state that the appropriation is for a cost-of-living adjustment "in the" particular fiscal year.

The legislature is presumed to be aware of existing statutory and common law, **State ex rel. Bird v. Apodaca**, 91 N.M. 279, 573 P.2d 213 (1977), and to be well informed and reasonable, and its legislation is to be interpreted in a sensible manner, **Sandoval v. Rodriguez**, 77 N.M. 160, 420 P.2d 308 (1966). The legislature's awareness of the Department's authority to administer payment of salaries to State employees and of the Department's practice of implementing cost-of-living adjustments on the date beginning a pay period nearest to the beginning of the fiscal year is presumably the reason for the wording in the General Appropriations Act of 1980. If the legislature had intended to require that the cost-of-living adjustment be effective on July 1, it could have included language to that effect. **Bettini v. City of Las Cruces**, 82 N.M. 633, 485 P.2d 967 (1971). By using the language "in the sixty-ninth fiscal year", the legislature recognized that the cost-of-living adjustment could be implemented at the beginning of a pay period and not necessarily on July 1. Finally, the Department's consistent interpretation of the language in the appropriations act for the last three years would be quite persuasive in any litigation concerning this issue. **Martinez v. Research Park, Inc.**, 75 N.M. 672, 410 P.2d 200 (1965).

It is therefore our conclusion that the Department may implement the cost-of-living adjustment provided for in the General Appropriations Act of 1980 on July 5 rather than on July 1.

## ATTORNEY GENERAL

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