

Opinion No. 23-3724

July 28, 1923

BY: MILTON J. HELMICK, Attorney General

TO: Requested by: Dr. Janet Reid, Director of Child Welfare, Santa Fe, New Mexico.

The Appropriation of \$ 3,000 Per Year as Salary of Director of Child Welfare Fixes the Salary at Such An Amount and no More can be Paid.

No Part of the Money Appropriated by New Mexico for the Salary of the Director of Child Welfare can be used to Match Federal Aid Money Under the Sheppard-Towner Act. It is Only Money Appropriated by the State, Exclusive of Salaries for the Carrying On of the Work Which can be Matched with Federal Donations.

OPINION

{*75} It is asked whether the Director of Child Welfare may receive a salary of \$ 4,000.00 per year, \$ 3,000.00 from the State of New Mexico and \$ 1,000.00 from the United States under the provisions of the Sheppard-Towner Act, for the twelfth and thirteenth fiscal years.

The original law creating the Department of Public Welfare authorized a Director of Child Welfare to be employed at a salary not to exceed \$ 4,000.00 per annum, but the Legislature of 1923 in appropriating for the twelfth and thirteenth fiscal years fixed the salary of the Director of Child Welfare to not exceed \$ 3,000.00. The appropriation for the Department of Public Welfare is divided into three specific items, numbered 1, 2, and 3. Item 1 is the salary of the Director of Public Health, not to exceed \$ 4,000.00. Item 2 is the salary of the Director of Child Welfare, just mentioned. Item 3 is for additional salaries, office contingent and traveling expenses, \$ 21,500.00. Under Item 3 it is provided that so much {*76} of the item as may be necessary may be applied to meet federal allotments under the Sheppard-Towner Act requiring dollar for dollar appropriations by the state, and it is provided that any balance remaining in Items 1 and 2 at the end of the fiscal year may be used to supplement deficiencies in Item 3.

This office is asked to say whether or not it would be legal to pay the Director of Child Welfare the \$ 3,000.00 appropriated in Item 2 and in addition, pay her \$ 1,000.00 from the monies derived from federal allotments. The federal allotments are paid directly into the state treasury and are expended by the Department of Public Welfare on warrants drawn on the State Treasurer.

It is an axiomatic proposition that under the Constitution of New Mexico an officer cannot receive anything by way of compensation or emolument or extra salary in addition to the amount provided by law, and it is not debatable that \$ 3,000.00 is the limit which can be paid the Director of Child Welfare by the State of New Mexico during

the twelfth and thirteenth fiscal years, but it is argued that the extra thousand dollars would be federal money and not state money. In other words, that the extra compensation would be paid by the United States and not by the State of New Mexico. I am unable to agree with this contention. The Federal allotments are made for the purpose of carrying on health work and it is required that a dollar of state money be expended for every dollar of federal money received. It is quite clear to my mind that under the terms of the appropriation act of 1923, no part of Items 1 or 2, which are the salaries of the Director of Public Health and Director of Child Welfare, can be credited against federal allotments. These amounts will be expended by the state in any event. It is the contingent appropriation in Item 3 which is to be used to meet federal donations. In other words, the state must spend an actual dollar from the amount appropriated in Item 3 in order to receive another dollar from the federal government.

I think that the payment of \$ 1,000.00 to the Director of Child Welfare from the monies received from the government would be a clear violation of our constitutional provision in that it would be a payment from the state to an officer in excess of the officer's salary provided by law. This proposed thousand dollar payment would actually come from the State of New Mexico because, if such payment were made, the money would be drawn obviously from the funds used in carrying on the public health work and if it were paid to the Director of Child Welfare, it would not be expended for other things in connection with the work of the Department. In other words, the payment of this additional thousand dollars would diminish the expenditures of the Department for other things by precisely that amount. The fallacy of the proposed arrangement, as I see it, is that the thousand dollars would not really be government money. If the government were to pay the Director of Child Welfare a thousand dollars on account of strictly government employment, over and above the amount allotted to the Department and without reference to the dollar for dollar matching system, under the Sheppard-Towner Act, the State of New Mexico will, of course, have nothing to say about it. But this proposed payment is vastly different. The payment is made to the state because the state is expected to expend another thousand in carrying on the work of the Department. When paid, the federal donation becomes state funds and if a thousand dollars is taken out of the department funds and paid by way of salary to the {*77} Director of Child Welfare, the payment is a payment of state funds which would otherwise be used in carrying out the work of the Department.

By reason of the foregoing I am of the opinion that the contemplated payment cannot be made and that the Director of Child Welfare cannot receive in excess of \$ 3,000.00 on account of her office.