

**Opinion No. [29-91]**

September 26, 1929

**TO:** Office of the Attorney General of New Mexico

SCHOOLS -- High school supervisor to be paid monthly.

**OPINION**

I have your favor of even date requesting my opinion as to whether or not you should honor a voucher from the Department of Education for the sum of \$ 240.00 purporting to cover the salary of the High School Supervisor "for the month of September, 1929." You ask me whether or not you should honor this voucher in view of the fact that the law allows \$ 2400.00 a year as the salary of the said High School Supervisor, or a salary of \$ 200.00 a month.

In reply thereto will state that there is no statutory or constitutional provision as to when such an officer as this is to receive his salary, but the custom is to pay monthly except where a different time is specifically fixed by constitution or statute. In *Dorman v. Sargent*, 20 N.M. 413-420 these two points are so decided. The language of the court in the opinion is as follows:

"It is a curious fact in this connection that we have no statute in this state which provides for the payment of salaries at any specific time. A practice of long standing has grown up to pay all officers monthly, unless either the Constitution or a statute specifically provides otherwise."

Neither can a state officer receive his pay prior to the rendition of the services. At page 418 of the above opinion the court inferentially holds this view which is self evident. The court uses this wording, speaking of the officers' pay.

"A taxpayer has no interest as to just when his salary shall be paid, so long as the officer is not overpaid, or paid prior to the rendition of his services."

The only provision of law as to the High School Supervisor is the item in the appropriation bill of 1929, which provides \$ 2400.00 for each year for this position. This cannot be otherwise interpreted than to mean that the incumbent is to render a full years service for the said \$ 2400.00, and that he could not earn that full amount in any six months, or if that idea was adopted, then in one month or one week. If he only worked a part of the time he would be entitled to only the proportion of the \$ 2400.00, as the time served bore to the full year.

Therefore, as he cannot be paid in advance of the services rendered, and as the voucher shows on its face that it is for only one month, it follows that he would only be

entitled to a voucher for \$ 200.00, and not for \$ 240.00, and hence no warrant should issue thereon for that amount.