

## Opinion No. 31-200

July 2, 1931

**BY:** E. K. Neumann, Attorney General

**TO:** Mr. Arsenio Velarde, State Auditor, Santa Fe, New Mexico.

{\*82} In your letter of June 29th, you call attention to the fact that Mr. H. F. Aspinwall was paid \$ 64.51 for salary as First Assistant State Comptroller from January 1st to January 8th, 1931, and that Mr. F. R. Gould likewise drew salary for this period, and also as First Assistant State Comptroller. You ask our opinion as to whether you should make demand upon either of these gentlemen for reimbursement to the State Comptroller Salary Fund for the first 8 days of January.

In our opinion the payment to Mr. Gould was a duplication for this period of time of the payment of salaries as First Assistant State Comptroller, and that Mr. Gould should refund 8 days pay.

Your second inquiry is in connection with your statement that Mr. Gould has been drawing additional salary in the sum of \$ 50.00 per month from the Motor Vehicle Department for salary as Supervisor of Audits for the Motor Vehicle Department. You wish to know whether Mr. Gould is entitled to this additional salary or whether the appropriation for his salary in the general appropriation bill, which is for, "Chief Assistant Comptroller and Director of Audits," is intended to cover all his services as such official.

We have no doubt but that this appropriation was intended, by the legislature, to cover all services rendered by Mr. Gould as First Assistant Comptroller. Article 20 Section 9 of the Constitution of this State provides as follows:

"No official of the State who receives a salary shall accept or receive to his own use any compensation, fees, allowance or emoluments for or on account of his office in any form whatever, except the salary provided by law."

We are convinced that the framers of our Constitution intended to include within the above provision instances of the kind to which you have directed our attention

We are unable to reconcile the additional payment of \$ 50.00 per month to Mr. Gould as Supervisor of Audits with this constitutional provision and with the appropriation {\*83} made for the First Assistant Comptroller and Director of Audits.

By: Frank H. Patton,

Asst. Attorney General