

Opinion No. 31-25

January 23, 1931

BY: E. K. Neumann, Attorney General

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

{*29} You request an opinion from this office as to whether or not you can pay any state officer his salary for the month of January, the services having been performed to date, when such officer's compensation is, by provisions of statute and-or constitution, to be paid quarterly.

The Constitution of New Mexico provides, as follows:

(a) Article 5 Section 12. Compensation of State Officers. "The annual compensation to be paid to the officers mentioned in section one of this article shall be as follows: Governor, five thousand dollars; secretary of state, three thousand dollars; state auditor, three thousand dollars; state treasurer, three thousand dollars; attorney-general, four thousand dollars; superintendent of public instruction, three thousand dollars, and commissioner of public lands, three thousand dollars; which compensation shall be paid to the respective officers in equal quarterly payments." (Then follows other provisions not pertinent to the question raised.)

(b) Article 6 Section 11. Justices of Supreme Court Salary. "The justices of the supreme court shall each receive an annual salary of six thousand dollars, payable quarterly."

(c) Article 6 Section 17. Salary of district judges. "Each judge of the district court shall receive an annual salary of four thousand five hundred dollars, payable quarterly by the State."

(d) In Article 11 Section 5, regarding the corporation commission, we find after other provisions -- "The salary of each commissioner shall be three thousand dollars per annum, payable quarterly."

The foregoing are all of the provisions of the Constitution, apparently, regarding the salaries of officers named and created thereby and as to the manner in which, and the time at which, these officers shall be entitled to receive their respective salaries.

The particular question raised by you was raised in the case Re Advisory Opinion to the Governor, Supreme Court of Florida 77 Southern 102, and in construing the provisions of the Constitution of the State of Florida, Section 3 Article 16, which was as follows: "The salary of each officer shall be payable quarterly upon his own requisition.", the Court said:

"This provision of our organic law (referring to the article and section above quoted) from its terms seem mandatory. The salaries of all State Officers are fixed at so much per year, and the quoted provision provides in plain terms that the salaries so fixed shall be "payable" quarterly; that is the equivalent of saying that such annual salaries be divided into four equal payments that shall become due and payable quarter-annually. As it cannot be said that the Constitution intended that any part of this fixed salary should be paid or payable prior {*30} to its having been earned by the office holder, it follows that the annual salaries provided for shall fall due and become payable in four equal amounts at the end of each quarter of each year and not before. The word "payable" is a descriptive word, defined as meaning "capable of being paid; suitable to be paid; admitted or demanding payment; justly due; legally enforceable." 6 Words and Phrases Judicially Defined 5245, and citations. As no payment for salaries can be made by the State Treasurer except upon a warrant issued by the Comptroller and countersigned by the Governor, and as no salary or part of a salary of an officer should be paid before it becomes lawfully due and payable, it would seem to follow that it would be irregular if not unlawful for the Comptroller to issue a warrant and for you as Governor to countersign the same for payment of any part of an official salary prior to the time when by law it falls due and becomes payable."

The provisions of our Constitution, as quoted in the second paragraph of this letter, are the same as those of Florida, and the wording almost identical to that construed by the Supreme Court of Florida in the foregoing case, consequently, it is my opinion that those officers, whose salaries are, by the Constitution or by specific legislation, fixed and to be paid or payable quarterly, are not entitled to receive such salary, nor is same due in whole or in part, except at the end of each quarter of each year, so that it would be irregular and unlawful for you to issue a warrant for the payment of any part of an official salary prior to the time when by law it becomes due and payable.