

Opinion No. 32-463

May 20, 1932

BY: E. K. Neumann, Attorney General

TO: Hon. George M. Neel, State Engineer, Santa Fe, New Mexico.

{*162} Your letter of May the 19th, relative to appointment of water master, has been received, and you suggest therein the appointment of one of your present force as water master without pay, and the additional employment of an assistant at a rate of pay commensurate with the duties and responsibilities.

The appointment of a water master in proper cases is authorized by Section 151-114 of the 1929 Compilation and the rate of pay which is \$ 4.00 per day is provided for by Section 151-116.

It is true, as you suggest, that the rate of pay for such assistants is not limited by law but on the other hand your attention is directed to the fact that the law only contemplates the employment of assistants in cases of emergency and such employment is only to continue during the existence of emergency.

We believe an emergency within the contemplation of this act refers to cases where there is an excess of work upon the water master, and in order to properly perform his duties as water master additional employees may be obtained.

We find nothing in your letter which brings your plan within this law and it is seriously doubted if the plan outlined by you would be legal. Also, under this act, you, of course, know that the water master and assistants are to be paid by the county upon accounts approved by the State Engineer.

As above stated, we cannot approve your plan from a legal standpoint, and, while the scheme might be feasible and practicable under the present conditions, we believe the propriety of same should not be approved also, and the policy is dangerous to establish.

Trusting the foregoing sufficiently answers your inquiry, I am

By: Frank H. Patton,

Asst. Attorney General