

**Opinion No. 44-4489**

March 28, 1944

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Benjamin D. Luchini, Chairman-Executive Director, Employment Security Commission of New Mexico, P. O. Box 1301, Albuquerque, New Mexico

I have your letter of March 25, 1944, wherein you request an opinion on whether or not there may be paid to the employees of your department, when traveling on official business, a per diem allowance in lieu of actual lodging and subsistence expense.

Considering Section 7-108 of the New Mexico 1941 Compilation with Section 11, Chapter 127 of the Laws of 1943, it is my opinion that you may properly pay to the employees of your department a per diem allowance, according to your regulation No. 1, Section VI, which you enclose, wherein you specify that the per diem allowance shall not exceed four dollars for intrastate travel and that the amount allowed for out-of-state travel is to be set by the Governor at his discretion. This regulation would seem to have been passed pursuant to valid statutory authority. I will call your attention, however, to the following portion of Section 11, Chapter 127, Laws of 1943:

"No allowance shall be made for lodging and subsistence in excess of four (\$ 4.00) dollars per day; nor for transportation, except by the shortest actually traveled route; and, in case of **subordinates**, only upon the written order of the head of the department directing such travel attached to the vouchers."

I might suggest that you include the provision above cited concerning subordinates in your regulation, or at least comply with it in administering your regulation.

Hoping that the above fully answers your question, I remain,

By HARRY L. BIGBEE,

Asst. Atty. General