

Attorney General of New Mexico

HAL STRATTON
Attorney General



P.O. Drawer 1508
Santa Fe, New Mexico 87504
505-827-6000

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OPINION
OF
HAL STRATTON
Attorney General

Opinion No. 87-45

By: Scott Spencer
Assistant Attorney General

To: The Honorable Mary L. Thompson
State Representative
Dona Ana County
District 36
1915 La Jolla
Las Cruces, New Mexico 88005

QUESTION:

Whether a local school district employee who serves on the State Board of Education may draw salary from the district and per diem and expenses from the State Department of Education?

CONCLUSION:

Yes. However, he may not be paid for time spent away from his duties with the district unless he takes authorized leave with pay.

ANALYSIS:

The New Mexico Supreme Court in Amador v. New Mexico State Board of Education, 80 N.M. 336, 455 P.2d 840 (1969) has held that the position of school teacher is not incompatible with that of a State Board of Education member.

Section 22-2-3 of the Public School Code, (Chapter 22 NMSA, 1978, grants members of the State Board of Education (the "Board") compensation as follows:

- A. Each member of the state board shall be entitled to receive per diem and mileage as

provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

B. Per diem and mileage shall be paid to members of the state board by the department of education out of funds appropriated and budgeted for that purpose.

Section 22-5-4 of the Public School Code empowers a local school board to hire and fix the salary of employees of the school district that the school board governs:

A local school board shall have the following powers or duties:

* * * *

D. subject to the provisions of law, approve or disapprove the employment, termination or discharge of all employees and certified school personnel of the school district upon a recommendation of employment, termination or discharge by the superintendent of schools. Any termination or discharge without the prior recommendation of the superintendent is void.

E. fix the salaries of all employees and certified school personnel of the school district.

The foregoing language then, authorizes an employee of a school district to receive a salary that the school board sets as compensation for services provided to the school district as an employee. The language in Section 22-2-3(A) that limits the compensation of a Board member to per diem and mileage does not prohibit the salary provided to an employee of a school district.

Statutes are to be construed to prevent an absurd or unreasonable result. Midwest Video v. Campbell, 80 N.M. 114, 452 P.2d 185, (1969); 1959-60 Op. Att'y Gen. No. 60-61. The reasonable interpretation of section 22-2-3(A) is that a member of the State Board of Education, in his capacity as a Board member, is limited to per diem and mileage expenses and may receive no other compensation in such capacity. A school district employee, however, performs a different function and is compensated for such services by a salary. It would be unreasonable to read section 22-2-3(A) as prohibiting a member of the State Board of Education from receiving any other compensation earned in another capacity.

We conclude, therefore, that a school district employee may receive salary for his services performed as an employee also generally and receive per diem and mileage expenses while serving as a member of the State Board of Education. The school district may not compensate a state board member during the actual time spent performing his duties on the state board and away from the school district unless he takes authorized leave with pay such as vacation time accrued or administrative leave authorized in accordance with the district's policies. It would also be inappropriate for the district to pay a state board member his salary less an amount required to hire a substitute teacher during the time that member is away from his duties with the school district and attending to board responsibilities. Otherwise, the district would be paying for services not rendered.


HAL STRATTON
Attorney General


SCOTT SPENCER
Assistant Attorney General