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OPINION
OF
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Opinion No. 88-72

BY: Andrea R. Buzzard
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TO: Honorable Timothy Z. Jennings
State Senator
P.O. Box 1797
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QUESTION:

1. Must a school district pay wages semimonthly to its non-certified school personnel?
2. May a school district pay wages semimonthly to its non-certified school personnel?

CONCLUSIONS:

1. No.
2. Yes.

ANALYSIS:

In 1937, the Legislature enacted a law entitled, "An Act to Establish Regular Paydays and to Regulate the Payment of Wages and Compensation for Labor or Service in Private Employment and Repealing all Acts in Conflict Herewith." 1937 N.M. Laws, ch. 109 ("1937 Act"). Subsection 1(A) of the Act, currently codified as Subsection 50-4-1(A) NMSA 1978 (Repl. 1988), defines "employer," for purposes of the Act, as:

[E]very person, firm, partnership, association, corporation, receiver, or other officer of the court of this state, and any agent or officer of any of the above mentioned classes, employing any person in this state, except employees of domestic labor in private homes and employers of livestock and agricultural labor.

Subsection 2(A) of the Act, currently codified as Subsection 50-4-2(A) NMSA 1978 (Repl. 1988), provides:

Every employer in this state shall designate regular pay days, not more than sixteen days apart, as days fixed for the payment of wages to all employees, paid in this state.... [T]he employer shall pay ... by the twenty-fifth day of the month ... [and] by the tenth day of the succeeding month....

In 1949, the Legislature added language in Subsection 2(A) to permit employers whose payrolls and checks were prepared outside New Mexico to pay by the last day of the month and by the fifteenth day of the succeeding month. 1949 N.M. Laws, ch. 117, § 1, but these provisions otherwise have remained unchanged since 1937.

In 1937, the Legislature already had enacted specific statutes to regulate the frequency of wage payments to governmental employees. In 1933, it enacted a law entitled, "An Act Regulating the Time of Payment of Salaries and Wages for those Employed by the State of New Mexico, and the Political Units thereof ... Repealing All Acts ... in Conflict Herewith." 1933 N.M. Laws, ch. 157 ("1933 Act"). Section 1 of the 1933 Act provided: "[A]ll persons employed by and on behalf of the State of New Mexico, including all officers, shall receive their salary or wages for services rendered, semimonthly ... not to exceed sixteen days from the date of payment of the next preceding payment of said salary or wages."¹

1 We note that, while the title of the 1933 Act mentions employees of both the State "and the Political Units thereof," the operative language in Section 1 applies only to state employees. The 1933 Act originated as House Bill 150. Section 1 of the bill as introduced applied to "all persons employed by an on behalf of the State of New Mexico, and all political units and sub-divisions therefore, including all officers." Thus, sometime before final passage, the Legislature deleted the phrase "all political units and subdivisions

The Legislature amended this provision in 1961 to exempt institutions of higher education, 1961 N.M. Laws, ch. 70, §1, and in 1975 to require that wages be paid "in accordance with regulations issued by the department of finance and administration."² 1975 N.M. Laws, ch. 128, §1. The Legislature has not amended ch. 157, §1 since 1975. Section 1 of the 1933 Act, as amended, currently codified at Section 10-7-2 NMSA 1978 (Repl. 1987), now reads: "[A]ll persons employed by and on behalf of the state of New Mexico, except those employed by institutions of higher education, including all officers, shall receive their salaries or wages for services rendered in accordance with regulations issued by the department of finance and administration." The department of finance and administration has not promulgated a regulation that prescribes the frequency of salary payments to school districts' non-certified school personnel.³

The other law in effect in 1937 that regulated the frequency of public employee wage payments was 1923 N.M. Laws, ch. 148, §1108, which provided: "All teachers shall be paid monthly." In Att'y Gen. Op. 63-143 (1963), the Attorney General construed this statute to apply only to public school teachers and not to other

thereof" from Section 1, but did not make a corresponding change to the title. This legislative history manifests an intent that the 1933 Act not apply to political subdivisions, including school districts. Moreover, "the title cannot control the main words of the statute." 2A N. Singer, Sutherland Statutory Construction §47.03 at 121 (4th ed. 1984). For this reason, we disagree with and hereby overrule Att'y Gen. Op. 59-23 (1959), which concluded on the basis of the title that the 1933 Act applied to county employees.

- 2 The 1975 amendment is entitled: "Relating to Public Employees ... to Authorize the Change of Pay Periods for Certain Public Employees."
- 3 In Att'y Gen. Op. 88-20 (1988), we concluded that school teachers were state employees within the meaning of Sections 2-1-3 and 2-1-4 NMSA 1978 (prohibiting legislator's receipt of any compensation for services performed as an officer or employee of the state, except his legislative compensation). However, Section 10-7-2, as amended in 1975, applies to a more narrow class of state employees: those subject to the regulatory authority of the department of finance and administration in the area of public employee salary payments. Cf. Article XII, Section 6 of the New Mexico Constitution, confiding financial authority and control over school districts to the state department of public education.

teachers that state agencies employed, and that the 1933 Act applied to state agencies' teachers. In 1967, the Legislature repealed this mandatory provision, 1967 N.M. Laws, ch. 16, §301, and substituted at §109 the following: "All certified school personnel shall be paid at least once a month during a school year." (Emphasis added.) This law currently is codified at Section 22-10-7 (Repl. 1986). Thus, the 1967 Legislature gave school districts the flexibility to pay certified school personnel their salaries more often than once a month, but did not mandate that they do so.

Thus, Subsection 50-4-2(B) by its express terms requires private employers to pay their employees every two weeks. Section 10-7-2 imposes the same obligation on most state government entities. Section 22-10-7 requires school districts to pay certified school personnel at least once a month. No statute or regulation regulates specifically the frequency of wage payments to a school district's non-certified school personnel.

The only remaining question is whether Subsection 50-4-2(A) implicitly applies to school districts. For several reasons, we believe it does not. First, if the Legislature had intended Subsection 50-4-2(A) to apply to governmental employers, such as school districts, it would not have been necessary to amend the 1923 and 1933 Acts in later years. We, as the courts, assume that the Legislature does not intend to enact useless statutes. State ex. rel. Bird v. Apodaca, 91 N.M. 279, 284, 573 P.2d 213, 218 (1977); Griego v. Health & Social Services Dept., 87 N.M. 462, 464, 535 P.2d 1088, 1090 (Ct. App. 1975).

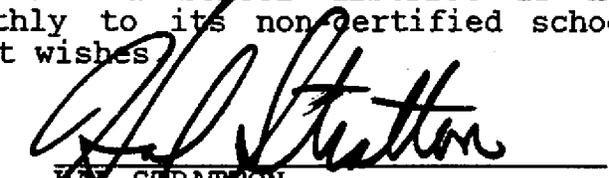
Second, in Southern Union Gas Co. v. New Mexico Pub. Serv. Comm'n, 82 N.M. 405, 482 P.2d 913 (1971), the New Mexico Supreme Court held that the United States was not a "person" within the meaning of a statute that defined that term to include, generally, individuals and firms: "There are many statutes in which neither the U.S. nor States of the Union are considered as a 'person.' When the legislature has wanted to include sovereigns or other governmental bodies in its statutes, it has known how to do so." Id. at 406, 482 P.2d at 914. In Rapp v. New Mexico State Highway Dept., 87 N.M. 177, 531 P.2d 225 (Ct. App. 1975), the New Mexico Court of Appeals followed Southern Union Gas Co. and concluded that the Highway Department was not a "person." The pertinent statute applied generally to firms and associations, but not specifically to governmental entities.

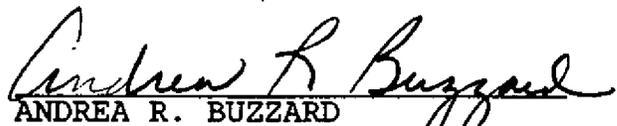
Third, the Legislature specifically has included governmental entities in other labor laws. For example, Section 51-1-42(D) of the Unemployment Compensation Law, Sections 51-1-1 to 51-1-54 NMSA 1978 (Repl. 1987) defines "employing unit" to include "any state

or local government entity." Section 52-1-2 of the Workers Compensation Act, Sections 52-1-1 to 52-1-70 NMSA 1978 (Repl. 1987), includes as covered employers "the state and each county, municipality, school district, drainage, irrigation or conservancy district." Thus, when the Legislature has wanted to include governmental entities in its labor laws, it has done so with specific language.

Fourth, assuming Subsection 50-4-1(A) was ambiguous, we may look to the 1937 Act's title to determine legislative intent. State v. Richardson, 48 N.M. 544, 549, 154 P.2d 224, 227 (1944). Cf. State v. Ellenberger, 96 N.M. 287, 288, 629 P.2d 1216, 1217 (1981) (act's title may not be read to limit an act where the statute itself is unambiguous). The 1937 Act's title reflects the Legislature's intent to regulate "private" employment.

Accordingly, we conclude that a school district is not required to pay wages semimonthly to its non-certified school personnel; but it may do so if it wishes.


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