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October 30, 1990

OPINION
OF
HAL STRATTON

TO: Honorable Don Silva
State Representative
8333 Cherry Hills Dr. N.E.
Albuquerque, New Mexico 87111

Opinion No. 90-21

BY: Andrea R. Buzzard
Assistant Attorney General

QUESTION:

May employees of the University of New Mexico ("UNM") run for state legislative seats and serve in the legislature, if successful candidates?

CONCLUSION:

UNM employees are not barred statutorily from running for legislative seats, but, if elected to the state legislature, they may not simultaneously serve as members of the legislature and as paid UNM employees consistent with NMSA 1978, §§2-1-3 and 2-1-4 (Repl. Pamp. 1983).

ANALYSIS:

Your inquiry is in the context of a state senator and two candidates for the state legislature. Specifically, your ask whether State Senator Gloria Howes may serve as a New Mexico Legislator and also remain employed by the University of New Mexico ("UNM"). Assistant University Counsel, Mr. Robert Bienstock, advises us that Senator Howes was employed previously as a temporary, part-time assistant professor. However, her last day of teaching was May 4, 1990, and her contract will not be renewed. Therefore, as to her continued ability to serve in both capacities, that issue is moot.

You also ask whether Ms. Danice Picraux and Mr. Rick Miera, UNM employees who are running for state legislative seats, may run

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for those seats and serve in the legislature, if elected. According to Mr. Bienstock, Ms. Picraux is a visiting assistant professor, employed in a temporary, part-time capacity, and Mr. Miera is employed in a regular, part-time capacity as a program specialist.

The UNM Board of Regents' policy statement, approved in September, 1970, permits political activity by university faculty members. Paragraph 2 of that statement provides:

Many kinds of political activity (e.g. holding part-time office in a political party, seeking election to any office under circumstances that do not require extensive campaigning, or serving by appointment or election in a part-time political office) are consistent with effective service as a member of a faculty. Other kinds of political activity (e.g., intensive campaigning for elective office, serving in a state legislature, or serving a limited term in a full-time position) may require that the professor seek a leave of absence from the University.

UNM's personnel policy no. 735, pertaining to political activity, provides:

All University employees are citizens, and like other citizens, should feel free to engage in political activities so far as they are able to do so, consistent with their full obligation to the University, and in accordance with applicable laws.

Thus, according to UNM's policies, UNM employees may seek election to state legislative seats so long as they may do so consistent with their obligations to the university and, if necessary, obtain authorization for unpaid leave. Those policies do not conflict with NMSA 1978, §§ 2-1-3 and 2-1-4 (applicable to members of the legislature and prohibiting receipt of compensation for services rendered the state except compensation as a legislator). See Att'y Gen. Op. 58-39 (1958) (concluding that a university professor is a state employee but may, nonetheless, run for a legislative seat).

However, employees of UNM are employees of the state and NMSA 1978, §§ 2-1-3 and 2-1-4 (Repl. Pamp. 1983) forbid members of the legislature from receiving compensation for services rendered the

state except that compensation allowed to legislators.¹ See Att'y Gen. Op. 57-40 (1957) (member of the state legislature is prohibited from accepting employment with state educational institution); Att'y Gen. Op. 70-27 (1970) (observing that state educational institutions are instrumentalities of the state whose action necessarily is action of the state); Att'y Gen. Op. 75-21 (1975) (the effect of those statutes prohibiting compensation to legislators for state employment is to prohibit a person employed by the state from serving simultaneously as a member of the legislature); Att'y Gen. Op. 88-20 (1988) (opining that school district employees are prohibited from serving in the legislature and construing §§ 2-1-3 and 2-1-4 to prevent compensation to school employees during the entire time such employees serve as members

¹Section 2-1-3 provides:

It is unlawful for any member of the legislature to receive any compensation for services performed as an officer or employee of the state, except such compensation and expense money as he is entitled to receive as a member of the legislature.

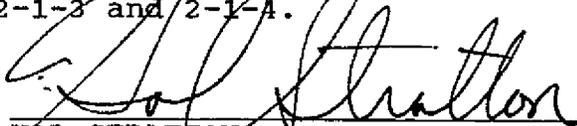
Section 2-1-4 provides:

It is unlawful for any officer of the state of New Mexico to pay to any member of the legislature compensation for services rendered the state of New Mexico as an officer or employee thereof except such compensation and expense money which such member is entitled to receive as a member of the legislature.

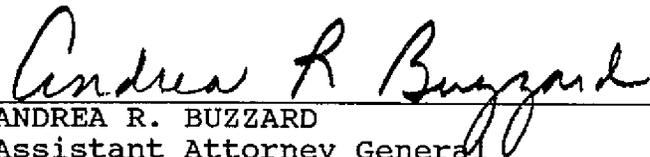
NMSA 1978, § 2-1-5 (Repl. Pamp. 1983) provides:

Any person violating the provisions of either of the two preceding sections [2-1-3 or 2-1-4 NMSA 1978] shall be guilty of a felony and upon conviction shall be punished by a fine of not less than one thousand dollars (\$1,000.00) nor more than twenty-five hundred dollars (\$2,500.00) or by imprisonment in the state penitentiary for not less than one (1) year not more than five (5) years or both, such fine and imprisonment in the discretion of the court.

of the legislature).² Therefore, should Mr. Miera and Ms. Picraux become elected to the state legislature, they could not simultaneously serve as members of the legislature and as paid UNM employees consistent with §§ 2-1-3 and 2-1-4.



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²A suit challenging the advice given in Att'y Gen. Op. 88-20 (1988) is pending currently in the appellate court.