

Opinion No. 52-5511

March 11, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Robert D. Castner State Auditor Santa Fe, New Mexico

{*224} This is in reply to your inquiry of February 20, 1952, as to your responsibility in regard to the approval of overtime payroll vouchers submitted by the Bureau of Revenue.

You pointed out in your letter that these vouchers are patently erroneous. The error in the vouchers comes about through the certification as to the number of hours worked being considerably in excess of the true number of hours worked. You advise that this as apparently done to effect the reimbursement of the employees for overtime at the rate of time and a half.

I have examined our statutes in regard to the approval of vouchers and I have consulted with the State Comptroller's office in regard to regulations he may have issued covering the preparation of payroll vouchers. There are no statutes and there are no regulations as to the establishment of wage rates or overtime rates. The Commissioner of Revenue has full authority to pay the employees of the Bureau for overtime worked. It is my opinion that the certification of a payroll vouchers for overtime which is in fact false should not be paid. Such certification might be made with entirely innocent intent but would nevertheless be incorrect.

It is my opinion that to obtain proper payment for overtime the correct number of hours worked should be certified to. They should set a higher rate of payment per hour for such overtime work actually performed. This would permit a truthful certification which could be acted upon by you as State Auditor, permitting you to issue {*225} lawful warrants for the payments due.

It is my opinion that issuance of warrants in the past on this type of payroll voucher, while not proper, constituted no violation of duty on your part. The only possible liability for these false certifications must fall upon the officer making such certificate. It is my opinion that no liability could attach unless the certificates were made for other than innocent or honest purposes.