

Opinion No. 53-5692

March 2, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Edward M. Hartman State Comptroller Santa Fe, New Mexico

{*85} This is in reply to your letter of February 20 in which you enclosed an inquiry from R. Howard Brandenburg, attorney for the Town of Taos, as to whether or not the Town of Taos can pay a policeman for vacation which he does not take but for which he works.

It is stated in their letter that normally when a policeman takes a vacation, the board of trustees pay another man for the vacation time.

Under Section 14-1803, N.M.S.A., 1941, the board of trustees is given control over all of the finances of the corporation and is further given the power to appropriate money for all corporate purposes and to provide for the payment of the debts and expenses of the corporation.

It is, therefore, the opinion of this office that if the Town of Taos, under its budget, has the money to pay this policeman for the vacation that he did not take, it would be just the same as if the board of trustees decided to raise his salary for two weeks or a month. If they have the money in their budget, they can do it. In cases where they have no money in their budget, it is our opinion that under Section 7-120, N.M.S.A., 1941, if it was a case of emergency, they could ask for a transfer of money from some other fund, which the law does not prohibit from being transferred, with the approval of the State Comptroller, the Chief Tax Commissioner and the Attorney General. However, from your letter we believe the Town of Taos has the money in its budget and a transfer of money is not necessary.

During the war, the Highway Department paid some of their engineers, which they could not spare, for their vacation time which was not used by them and we advised the Highway Department that they could legally do this providing they had the money in their budget to pay for same.

We trust that this fully answers their inquiry.

By: Hilario Rubio

Assist. Attorney General