

Opinion No. 53-5762

June 10, 1953

BY: RICHARD H. ROBINSON, Fred M. Standley

TO: Charles G. Sage Brigadier General The Adjutant General State of New Mexico
Santa Fe, New Mexico

{*162} We are in receipt of your letter of May 27, 1953, requesting an opinion on certain phases of Chapter No. 70 of the 1953 New Mexico Session Laws, and specifically Section 7 of that Act which reads as follows:

"That all State, county and municipal employees who are members of organized units of the Army or Air National Guard or Army, Air Force, Navy or Marine reserves, shall be given not to exceed fifteen days military leave with pay annually when they are ordered to active duty training with such organized units, such leave to be in addition to other leave or vacation time with pay to which such employees are otherwise entitled."

Your questions will be answered in the order in which they were given in your letter.

Question: On what date in June will the Act become effective.

Answer: June 13, 1953.

Question: Does the Act limit paid military leave to members of organized units of the reserve forces?

Answer: All State, county and municipal employees who **are members of organized units** are eligible for the additional military leave provided in Section 7 above. The Act does not provide for any other persons to be included, therefore it is applicable only to such members of organized units.

Question: Are employees of tax-supported schools in New Mexico included in those persons covered by this Act?

Answer: No, the Supreme Court of the State of New Mexico, in the case of Brown et ux vs. Borden et al, 56 N.M. 96 holds, in effect, that teachers in municipal, county and consolidated school districts of this state are not state, county or municipal employees. The municipal, county or consolidated school district is a separate entity entirely and the person employed by those school districts do not come within the category of "State, county, and municipal employees."

Question: Does the Act provide for the full rate of pay or does it provide for the governmental unit to merely supplement the pay up to the amount of full pay the governmental employee would have received would he have remained on his job?

Answer: The above Section, in our opinion, requires that the governmental unit pay the full salary to {*163} the employee regardless of the amount of money drawn by him while on active Military duty. Thus, it would be illegal for a governmental unit to pay an employee only the difference between his military pay and the top limits of pay which he regularly draws from the military unit.

Question: Is the full salary payable under the above cited Section permissible under the laws of the State of New Mexico?

Answer: The Legislature has it within its power to set up a separate class and if the Legislature of this State should deem the services of the State of such value as to require the attendance of employees of the State, the counties and municipalities to attend and participate in active military duty for a stated period then they have it within their power to do so.

Question: Is the employee entitled to a full 15 days military leave with pay or are the directives referring to "to weeks" military leave controlling?

Answer: The Section states that the persons shall have 15 days of military leave with pay. Any directive contrary to this is specifically over ridden and this Section governs over and above any or all directives heretofore made on the subject.

We sincerely hope that the above answers all of your questions concerning Chapter 70 of the 1953 New Mexico Session Laws.

Assist. Attorney General