

**Opinion No. 54-5936**

April 5, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Gerald R. Clark, M.D. Director, Department of Public Health State of New Mexico  
Santa Fe, New Mexico

{\*385} Your letter, dated March 17, 1954, is herein acknowledged. You request that we give you a written opinion as to whether or not you can legally assign a Public Health Physician as Acting District Health Officer to Health District Number Nine with headquarters at Raton. You state that besides the duties of District Health Officer, he will perform additional services such as conducting clinics and providing health services in the schools. You also state that the Public Health Physician's present salary is \$ 9,000.00, and that when this Public Health Physician is assigned to Health District No. 9 you wish to pay \$ 6,000.00 of his salary from the District Health Officer fund and the balance of the Public Health Physician's salary would be paid from one of your general health funds. Chapter 172 of the Laws of 1947, § 5, which appears as § 71-208, N.M.S.A., 1941 Comp., p.s., reads as follows:

"ASSISTANT DISTRICT HEALTH OFFICERS -- ACTING DISTRICT HEALTH OFFICERS. -- The district health officer when temporarily disabled or physically unable to fulfill all or any of his official duties shall appoint one or more assistant district health officers, who shall perform the duties of the district health officer in the county for which he is appointed assistant, without extra expense to the state. Provided, that in case there shall be an interim in which there is no district health officer, an acting district health officer may be appointed by the state director of public health and paid out of the appropriation for the district health officer, the acting district health officer to hold office only until a successor to the district health officer shall have been duly appointed."

It is plain from the language of the above quoted statute that a Public Health Physician can be placed as an Acting District Health Officer and there is nothing in the above quoted statute that prevents a Public Health Physician from being named Acting District Health Officer. As Acting District Health Officer, he would be entitled to the Health Officer's salary of \$ 6,000.00. If he is also given and required to perform additional duties and services as Public Health Physician not being performed by the present Health Officers, such additional services could be paid for out of the general health fund.

Trusting that this fully answers your inquiry, I remain

By: Hilario Rubio

Assist. Attorney General