

Opinion No. 55-6070

January 6, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. John C. Hays Executive Secretary Public Employees' Retirement Board, P. O. Box 925, Santa Fe, New Mexico

This office is in receipt of your request for an opinion upon the following question: Does the Public Employees' Retirement Board have the authority to classify and fix the salary of the Executive Secretary in the absence of a classification of that position by the State Personnel Board?

For the purpose of this opinion, it is not now necessary to decide whether or not classification of positions by the State Personnel Board would apply to the Public Employees' Retirement Board. This, for the reason that whatever the answer to that question may be, in this particular situation the State Personnel Board has not undertaken to classify the position in question.

The pertinent provision concerning employment and payment of salary of the Executive Secretary is contained in Section 5-5-3, New Mexico Statutes Annotated, 1953, subsection 2, reading as follows:

"The retirement board shall appoint an executive secretary who shall be the chief administrative officer of the board and the association. The board shall employ such professional and technical services, and such clerical services as are required for the proper operation of the association. The compensation for such services shall be fixed by the retirement board and paid from the income fund."

The authority for fixing the salary of the Executive Secretary must be lodged somewhere and if, without deciding that the State Personnel Board has the authority so to do, said State Personnel Board has not undertaken to do so, the only reasonable conclusion is that the Retirement Board, who by the wording of the statute quoted is authorized to fix and pay the compensation for such services, must be the proper Board for fixing the salary for this position.

It is, therefore, the opinion of this office that the Retirement Board has the authority to fix the salary of the Executive Secretary of such Board, and in the absence of any attempt of the State Personnel Board to classify the position and fix the salary of the Executive Secretary, no consent or approval from said Board is required.

Trusting that this is the information you desire, I am

By

Santiago E. Campos

Assistant Attorney General