

Opinion No. 56-6469

June 14, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. D. M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

We have your letter of June 5, 1956 in which you request an opinion from this office upon the following questions:

"1. Does a governmental subdivision have the legal right to spend State money for salaries, travel expenses, and tuition of an employee who is attending a school?"

Actually this presents the question of whether or not the expenditures of public funds in such way as outlined in your question would constitute a violation of Section 40-8-12, N.M.S.A., 1953 Compilation. This particular statute, namely, 40-8-12, reads as follows:

"Receiving or paying public funds for services not rendered -- Penalty. -- Except in the case of payments covering lawful vacation periods and absences from employment because of sickness, any person who receives payment, or any person who makes payment or causes payment to be made from public money where such payment purports to be for wages, salary, or other return for personal services and where such personal services have not in fact been rendered, shall be guilty of a felony and shall be punished by a fine of not less than one thousand dollars (\$ 1,000.00) nor more than five thousand dollars (\$ 5,000.00) or by imprisonment for not less than one (1) year nor more than two (2) years, or by both such fine and imprisonment."

This statute prohibits the expenditure of State funds for personal services where such personal services have not been, in fact, rendered. The question then becomes, is a school rendering a personal service, so that a State employee attending such school could be allowed necessary travel expenses together with salary and other expenses incidental to the attendance at this school? This presents a question of fact which would have to be determined by reference to all the circumstances attending the particular situation. This would depend upon the type of school, the relationship of the school to the services required of the public employee; further, it would depend upon whether such school attendance would increase the efficiency and make a better employee. From these various factors it should be decided whether the attendance at such a school would, in fact, be rendering services to the State of New Mexico in line with the requirements of the particular office. In other words, it is to be noted, that this statute requires that payment is only to be made for services actually rendered to the State of New Mexico. It does not mean the services would necessarily have to be rendered in the State of New Mexico. It should be pointed out that this is a criminal statute and as such would be strictly construed against the State. It can be seen that there can be no categorical answer given to this particular question.

Each situation must rest upon its own facts in order to determine whether public funds could be expended in the way that you outline in your question.

You further submitted two folders from Utah School of Alcohol Studies and Yale University's Summer School of Alcohol Studies, and requested an opinion as to whether these would constitute a school. We think without a doubt each would constitute a school within the generally recognized meaning of that word.

Trusting we have answered your questions, we remain

By Paul L. Billhymer

Assistant Attorney General