

Opinion No. 56-6538

November 1, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. H. R. Swenson, Warden, New Mexico State Penitentiary, P. O. Box 1059, Santa Fe, New Mexico

You have asked whether the Board of Penitentiary Commissioners or the Penitentiary Personnel Panel is the proper body to hear appeals taken from orders of suspension of employees issued by the Warden under the proviso of Section 7, Chapter 230, Session Laws 1955, (Section 42-1-69, N.M.S.A., 1953 Compilation, Pocket Supplement). That proviso reads:

". . . Provided, however, that the warden is hereby authorized to suspend members of the staff for disciplinary causes for periods of not in excess of thirty days. Any member of the staff on permanent employment status shall have the right to have such suspension reviewed by the board, but no further review or appeal shall be permitted."

You indicate that the Penitentiary Personnel Panel has concluded that whenever the term "board" is used in Section 7 the reference is to the Penitentiary Personnel Panel and not to the Board of Penitentiary Commissioners. And this conclusion is based on the provisions of Section 5 of the Act and the numerous references therein to the "board". Admittedly the references in Section 5 to the "board" may be somewhat ambiguous. The manner in which these references are set out does raise a question as to whether the Board of Penitentiary Commissioners or the Penitentiary Personnel Panel is the body referred to.

However, your attention is directed to Section 3 which, in part, provides:

"The classified personnel of the state penitentiary shall include every employee except the following:

"a. Members of the board of penitentiary commissioners, **hereinafter referred to as the board. . . .**" (Emphasis Supplied)

We conclude, therefore, that the reference in Section 7 to the "board" is to the Board of Penitentiary Commissioners and not the Penitentiary Personnel Panel.

We have further examined Chapter 230, Laws of 1955, in a memorandum which we are attaching with this opinion. The observations in that memorandum are not made a part of this opinion, since it would unduly lengthen it. But that memorandum is submitted for your consideration in order that you may know more fully why we arrived at the above conclusion.

We trust this answers your inquiry.

By Santiago E. Campos

Assistant Attorney General