

## **Opinion No. 57-98**

May 13, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,  
Assistant Attorney General

**TO:** Mr. George Brock, Executive Director, Commission on Alcoholism, P. O. Box 2111,  
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### **QUESTIONS**

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Is the Commission on Alcoholism "duly bound by law to to work under the State Personnel System"?

#### CONCLUSION

Yes.

### **OPINION**

#### ANALYSIS

The constitutionality of § 5-4-1, N.M.S.A., 1953 has been thoroughly discussed in Attorney General's Opinion No. 6120, wherein it was held that the creation of a system of job and salary classification for employees the State was constitutional, and of the Executive Department of further, that once instituted, the program or plan shall remain in effect until affirmative action is taken by the Governor to institute a new plan for or to dissolve without further creation one already in existence.

By way of pointing out those individuals subject to the provisions of the hereinabove considered act and any program or plan promulgated with reference thereto by the Governor, we find in Attorney General's Opinion No. 5807 that "state officials" are exempt but that all employees not constitutionally or legislatively provided for are to be considered "employees" under the section, and accordingly covered by the Personnel Plan. An exception to this holding is found and discussed in Attorney General's Opinions No. 5781 and 5781-A wherein offices (State Land Office) which have been provided for in the Enabling Act and charged with public trusts are not to be controlled in any fashion, including the classification of personnel working for and in behalf of such state offices and officials.

In the instant situation, the Commission on Alcoholism was brought into existence by Chapter 114, Laws 1949, which laws provided, in part, for the appointment by the Governor of a five member commission who were to serve without compensation or

salary except for per diem payment when appropriate. The aforesaid law further provided for the designation of commission officers and also for an executive director. All duties, discretion and responsibilities are placed by § 46-12-3, N.M.S.A., 1953, in the aforesaid commission. The executive director, and any other provided for agents or employees, are responsible directly to the commission and act only within the confines of the orders and directions initiated thereby.

Accordingly, and with specific reference to the distinction between public officers and public employees as found in **State ex rel. Gibson v. Fernandez**, 40 N.M. 288, 58 P. 2d 1197, it is our opinion that the Commission on Alcoholism, with regard those employees or personnel receiving salaries therefrom, is subject to and bound by the rules of the State Personnel System.