

Opinion No. 58-163

August 4, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
Assistant Attorney General

TO: Marguerite K. Cantrell, Secretary, New Mexico State Board of Examiners In The
Basic Sciences, P. O. Box 1522, Santa Fe, New Mexico

QUESTION

FACTS - QUESTION

Pursuant to rules and regulations, specifically § 4 thereof, the members of the New Mexico State Board of Examiners in the Basic Sciences have been paid \$ 12.50 for a board meeting; \$ 12.50 for formulating a set of examination questions and \$ 12.50 for grading 8 sets or fraction thereof of examination papers. The out of town members have also been paid mileage at 6c per mile to and from the place of meetings. No information on per diem is contained in the letter of inquiry. Can the board members be compensated on the above basis?

CONCLUSION

No.

OPINION

ANALYSIS

At the outset, this office would like to make plain that its function is to interpret the law as it is found in our statute books and to apply the same to situations arising thereunder. Consequently whether or not this office approves or disapproves of the effect of such legislative enactments, is of no material consequence.

§ 4 of the "Rules and Regulations for the New Mexico State Board of Examiners in the Basic Sciences" reads as follows:

"A board member while actively engaged in the discharge of his duties, shall be entitled to be paid the sum of \$ 12.50 per day for each day or fraction thereof, that he is so engaged. Board members residing outside of the city in which a board meeting shall be held shall be entitled to an allowance of \$ 4.00 per diem plus 6c per mile for travel to and from his place of residence. A Board member shall be entitled to be paid the sum of \$ 12.50 for the preparation of questions, and the sum of \$ 12.50 for the grading of each set of questions of eight or less. In the event a member is required to grade more than

eight sets of questions, he shall be entitled to receive an additional payment of \$ 12.50 for each additional eight sets of questions or fraction thereof that he grades."

The statutory section providing for payment of the board members is § 67-1-5, N.M.S.A., 1953 which, in part, provides:

"Each member of the board shall receive \$ 12.50 per day and actual expenses when actively engaged in the discharge of his duties."

Reluctant as this office is to make such pronouncement, it appears to be impossible to reconcile the quoted section of the statute with the schedule of payments provided for in the above quoted rule. Obviously the statute limits the compensation of an individual board members to \$ 12.50 a day whereas the board creates a completely different criterion for the computation of such compensation. This new criterion may coincide in actual practice with the statute - by that we mean that a days' work may reasonably consist of a board meeting or the formulation of a set of examination questions or the grading of 8 sets of examination papers. However, this is definitely not the criterion established by statute and it is only the statutory standard which this office believes is authorized the board. As an aside and not necessarily indicating that such is the case it might also be possible that a board meeting would be held in the morning, a set of examination questions formulated in the afternoon and a set of 8 examination papers graded in the evening. Under the criterion set up by the above rules, the board member would thereupon sign a voucher stating that he had done three days' work and was entitled to receive the sum of \$ 37.50. Entirely aside from the propriety of such a situation this office is dubious as to the legality of such instrument in light of the fact that the statute specifically prescribes a limitation of \$ 12.50 per day for board member compensation.

It has been suggested that as a practical matter, so long as the criterion setup by the board is reasonably in conformance with the statute that a favorable presumption arises. While this writer substantially shares the logic of this viewpoint generally, he finds it impossible to countenance a course of action which gives rise to a presumption of statutory conformance when the statute specifically prescribes its own criterion in plain and unequivocal language.

Hence this office is of the opinion that a criterion established by the rules and regulations hereinbefore referred to which is not or may not be in accordance with the statutory authority conferred, is invalid.