

## Opinion No. 58-215

October 28, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilario Rubio, Assistant Attorney General

**TO:** Mr. C. W. Burrell, Director, New Mexico Fair Employment Practice Commission, P. O. Box 1726, Santa Fe, New Mexico

### QUESTION

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Are the three appointed members of the Fair Employment Practice Commission who were appointed by the Governor entitled to be paid \$ 10.00 or any amount plus per diem and travel allowances for attendance at meetings of the Commission?

#### CONCLUSION

No; see opinion.

### OPINION

#### ANALYSIS

You state in your letter of October 20th that you have been paying \$ 10.00 plus per diem and mileage allowance to the three Fair Employment Practice Commission members for attending meetings of the Commission. The pertinent statute dealing with this question is as follows: (Section 59-4-6, N.M.S.A., 1953 Compilation Subsection (b)).

"(b) The members of said commission **shall receive no salary.** (Emphasis added)"

The above subsection specifically states that members of the Fair Employment Practice Commission shall receive no salary. However, subsection A of Section 9 of Section 11-4-4, N.M.S.A., 1953, (Ch. 235, Laws 1957), the currently effective general appropriations act, provides as follows:

"A. No officer or employee of the state shall be allowed or paid any sum for transportation, lodging or subsistence, except when traveling away from his designated post of duty on official business, nor in excess of necessary traveling expense actually incurred and paid; except that state officers and department heads may allow in lieu of actual expenses for lodging and subsistence a sum not to exceed ten dollars (\$ 10.00) per day, the rate allowed being at the discretion of the state board of finance. The maximum rate which may be allowed for travel by privately owned cars shall be ten cents (\$.10) per mile. Any state officer or department head authorizing the use of a

privately owned car shall file such written authorization with the department of finance and administration prior to submitting vouchers in payment of such use."

Subsection (B) of Section 9 of the same statute providing for payment of out of state travel, reads as follows:

"(B) Out of state travel must be authorized by the governor in writing before such travel is incurred, such approval being on regular forms prescribed by the department of finance and administration. The rate of per diem or expense allowance and method of transportation for out of state travel shall be at the discretion of the governor, except that specific agencies may be exempted by the governor where the funds for out of state travel are all provided by federal governmental or nongovernmental sources."

It is clear from our interpretation of the above statute that no officer or employee of the State of New Mexico shall be allowed or paid any sum for transportation, lodging or subsistence, except when traveling away from his designated post of duty, on official business, nor in excess of necessary expense actually incurred and paid; except that state officers and department heads may allow in lieu of actual expenses for lodging and subsistence a sum not to exceed ten dollars (\$ 10.00) per day, the rate allowed being at the discretion of the State Board of Finance. We understand that the Department of Finance and Administration has adopted the rate of \$ 8.00 per diem for in state travel, the State Board of Finance having approved this rate.

Accordingly, the three members of the Fair Employment Practice Commission are state officers appointed by the Governor and are entitled to \$ 8.00 per diem and traveling expenses for in state travel, as provided by the rules and regulations of the Finance Department, in effect. The rate of per diem and travel expense allowable for out of state travel is fixed by the Governor, in his discretion, as provided in subsection (B) of Section 9, quoted above.

It is therefore the opinion of this office that the three members of the Fair Employment Practice Commission are entitled to per diem and mileage at the rate of \$ 8.00 per day and mileage as provided by the rules and regulations for in state travel by the State Finance Director. While attending meetings out of the state for the Commission, the commissioners will be entitled to whatever is authorized by the Governor in writing before such travel is incurred. We find no other statute which permits you to pay \$ 10.00 a day or any other amount in addition to per diem, and we advise that this practice be discontinued in the future.