

Opinion No. 58-52

March 11, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General

TO: Mr. L. D. Wilson, Chief Highway Engineer, State Highway Department, P. O. Box 1641, Santa Fe, New Mexico

QUESTION

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Does the Department of Finance and Administration have the authority to refuse an increase in salaries granted by the State Highway Commission?

CONCLUSION

No, however see opinion in regard to the Personnel Board.

OPINION

ANALYSIS

It is our understanding that the Department of Finance and Administration has refused to process vouchers allowing an increase in salaries granted by the State Highway Commission to two employees employed by the said Commission, thereby negating a raise authorized by the Chief Highway Engineer. We have been informed that the foregoing action was taken by the Department without the approval of the Governor or the State Board of Finance. It is contended by the Director of the Department that the pay scale paid by the State Highway Commission is much higher than in other administrative departments and that his action in refusing to process the pay raises comes only after a series of raises have been submitted by the State Highway Commission which have accounted for further disparity in wages paid among the various State Departments.

Based upon the above facts, the specific question raised is whether the Department of Finance and Administration may fix individual salaries of individual employees of a department or agency of the State. From the outset, it is evident that the Department of Finance and Administration has no legislative authority to classify any employees, for salary purposes, working in the various executive departments, except of course its own employees. From a practical viewpoint, it is also apparent that the Department is in no position to evaluate employees given due regard to the character of the work performed, the training required for the performance of the employment, or the importance of the services rendered. This, perhaps, is particularly true in the instant case which involves trained engineers engaged in highly technical employment.

Notwithstanding the above, we are aware of the broad authority delegated to the Department of Finance and Administration by the 1957 Legislature and must necessarily discuss such authority in this opinion. We refer specifically to §§ 11-2-65, 11-2-67, 11-2-68 and 11-4-4, N.M.S.A., 1953 Compilation, Pocket Supplement.

Section 11-2-65 provides, in essence, that the Division of Financial Control of the Department of Finance and Administration shall determine the legality of proposed expenditures and states as follows:

"Before any vouchers or purchase orders are issued or contracts are entered into involving the expenditure of public funds by any state agency, the authority for such proposed expenditure shall be determined by the division of financial control. After the authority for such expenditure is determined, the appropriate fund shall be shown by the division to be encumbered to the extent of such proposed expenditure."

This section, we believe, in relationship to the instant problem, authorizes the Department of Finance and Administration to determine whether the payroll voucher is submitted in proper form and whether the employee actually performed the services stated therein. It does not authorize the Department to establish a maximum wage or make a determination thereon.

Section 11-2-67, *supra*, merely states that all state warrants shall be issued by the Director of the Department of Finance and Administration. We are of the opinion that this section has no bearing upon the issue presented in this opinion.

Section 11-2-68 requires that certain determinations be made by the Department of Finance and Administration before a warrant on the Treasurer of the State of New Mexico shall be issued. The statute provides:

"No warrant upon the state treasury for the disbursement of funds, shall be issued except upon the determination of the division of financial control that the amount of the expenditure: (1) does not exceed the appropriation made to the agency; (2) does not exceed the periodic allotment made to the agency or the unencumbered balance of funds at its disposal; (3) is for a purpose included within the appropriation or otherwise authorized by law."

It is possible that this section could have a definite bearing upon an employee's salary if the issuance of the salary exceeds the appropriation made to the agency or exceeds the agency's periodic allotment or its unencumbered balance of funds at its disposal. We assume for the purpose of this opinion based upon information supplied by the State Highway Commission that the necessary funds to provide for the wage increases are available. The third clause of this section states that the warrant issued must be for a purpose included within the appropriation or otherwise authorized by law. We have been assured by the State Highway Commission that the salary increases contemplated were made within the framework of the Commission's personnel program. It has been suggested that perhaps the State Highway Commission's employees are subject to the

so-called "Personnel Act" established by §§ 5-4-1 to 5-4-4, N.M.S.A., 1953 Compilation. We are of the opinion that we are not called upon at this time to resolve that question. State Highway Commission employees have never been classified under § 5-4-1, supra, and until this is an accomplished fact, Highway employees are not subject to § 5-4-1.

In support of the proposition stated in the above paragraph, that Highway employees do not come within the purview of the Personnel Act, we submit the well reasoned case of State ex rel. Yapp et al. v. Chase, State Auditor, et al, (Minn. 1925) 206 N.W. 396, in which a section of the Minnesota Code comparable to § 5-4-1, supra, is construed. The Minnesota Court held:

"The act authorizes the commission of administration and finance to classify and grade the employees of the various officials, departments, and agencies of the state, and to fix salary scales for the various classes and grades so established, but does not authorize it to fix the salary of individual employees.

The commission of administration and finance not having classified the employees of the Railroad and Warehouse Commission, nor fixed a scale of salaries for such employees, they were entitled to the salaries fixed by the Railroad and Warehouse Commission, and there was no legal ground for disapproving the estimate for such salaries."

In view of the foregoing, it is, therefore, our opinion that if the salary increases granted were pursuant to the State Highway Commission's personnel plan, such increases are lawful and the Personnel Act is not applicable until State Highway Commission employees are specifically included under the Act.

Section 11-4-4, supra, is the General Appropriations Act. Subsection 15 of the said Act provides:

"The department of finance and administration with the approval of the state board of finance is hereby authorized to reduce all annual operating budgets made herein not to exceed fifteen percent, except interest and principal payments on debts and salaries of elected state officials."

A careful reading of this subsection unequivocally shows that the Department of Finance and Administration may reduce the annual operating costs of a department by as much as 15% of the department's budget. It has been submitted that this section could be used by the Department of Finance and Administration, with the approval of the State Board of Finance, to regulate salaries by threatening to cut the department's operating budget should pay increases not be in accordance with the express views of the Department of Finance and Administration and the Board of Finance. In the instant case, we revert to the facts as we know them. The salary increases were refused by the Director of the Department of Finance and Administration without consultation with the Board of Finance. Conceding for the purpose of argument that this section was intended

by the Legislature to regulate, classify and determine wages to be paid, the use of this section as a punitive measure to regulate wages would require the acquiescence of the Board of Finance. Such approval in this case obviously has not been secured and this is determinative on this particular controversy.

Assuming that the Department of Finance and Administration secured authority from the Board of Finance to reduce the annual operating budget of the State Highway Commission by 15%, there remains the question as to whether such action would be constitutional if the effect of the reduction would, for all practical purposes, put the Department out of business. In the case of *State ex rel. Prather v. State Board of Finance* 59 N.M. 121, 279 P. 2d 1042, our Supreme Court stated that the Legislature could not reduce an appropriation which an administrative board depends upon for its existence and operation if to do so would put the board out of business. This case would certainly apply to the Department of Finance and Administration and the Board of Finance under proper circumstances. It is not inconceivable that a 15% reduction of the Highway Commission's budget, in an effort to regulate wages, would seriously curtail the operation of that Commission, thus rendering inoperative its program. This would be a factual question which would arise only if the action was taken as outlined above.

By way of conclusion, it is our opinion that the Department of Finance and Administration has no authority to refuse an increase under the facts presented. As previously indicated, we believe that the wage increases are proper and legal if they were executed within the Highway Commission's personnel plan. As stated in this opinion, we are not called upon to make a determination as to whether State Highway Commission employees are subject to the Personnel Act since no action to include Highway employees under the provisions of the Act has ever been undertaken. Assuming that there is an adequate budget to allow the wage increases and that the wage raises were pursuant to the State Highway Commission's personnel plan, we hold that the Department of Finance and Administration cannot refuse the increases in salary granted by the State Highway Commission.