

Opinion No. 58-66

April 1, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. Charles B. Barker, Attorney, Bureau of Revenue, Santa Fe, New Mexico

QUESTION

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The Bureau of Revenue personnel have been paid on the first and fifteenth of each month. Can the paydays be changed to the fifth and twentieth of each month without violating Section 5-4-5, NMSA, 1953 Compilation?

CONCLUSION

Not immediately, but eventually.

OPINION

ANALYSIS

The statute cited in the question is as follows:

"It is hereby provided that all persons employed by and on behalf of the state of New Mexico, including all officers, shall receive their salary or wages for services rendered semimonthly, and that the payment of said salary and wages shall be paid to said persons so employed within not to exceed sixteen (16) days from the date of payment of the next preceding payment of said salary or wages."

from which it will be observed that your first payday under the proposed system would be more than 16 days after the preceding payment. In your request letter, you have conceded such would amount to a technical violation of the quoted statute. Irrespective of your good reasons for suggesting the above change in time of payment, and notwithstanding of violation of Sec. 5-4-5 in this instance might be "technical". this office under no circumstances can countenance a violation of law.

However, by paying on the 16th day, your proposed plan would eventually be achieved (after several months), and such would not constitute a violation of law. Immediate change to paying on the 5th and 20th cannot be approved however.