

Opinion No. 59-15

February 20, 1959

BY: FRANK B. ZINN, Attorney General

TO: Honorable Ralph Gallegos State Representative State Capitol Santa Fe, New Mexico

The office of the Employment Security Commission is a state agency and also a part of the executive branch of the government.

OPINION

{*22} This is written in reply to your recent request for an opinion on the following questions:

Is the office of the Employment Security Commission a state agency?

Is the office of the Employment Security Commission a part of the executive branch of the government?

The answer to your first question, is, in my opinion, that the Employment Security Commission is a state agency.

In answer to your second question, it is my opinion that it is a part of the executive branch of our New Mexico state government.

My opinion on your first question is based upon Sections 10 and 11 of Chapter 1, Special Session Laws of 1936 which appear as Sections 59-9-10 and 59-9-11 N.M.S.A. 1953 Comp. In Section 10 of the act, the legislature of New Mexico created the Employment Security Commission of New Mexico, consisting of three members who shall be appointed by the governor, by and with the consent of the senate. It also provides the salaries of the commission and the appointment of an executive director. Section 59-9-11, N.M.S.A. 1953 Comp. provides for the duties of the commissioners.

My opinion as to the agency being a part of the executive branch is based on the holding of the New Mexico Supreme Court in the case of Pollack vs. Montoya, 55 N.M. 390, 234 P. 2d 336. The court held that the chief of the Division of Liquor Control was a public officer of the State of New Mexico and quoting from 22 Ruling Case Law, page 381, Section 12, stated that the chief elements of what constitutes a public officer are:

1. That position must be created by law.
2. There must be certain definite duties imposed by law on the incumbent.

3. They must involve the exercise of some portion of the government power.

The court went on to say in this case, that enumeration by the Constitution of certain officers constituting the **Executive Department** would not necessarily deprive the Legislature of the power to create other **executive officers**, although it cannot abolish any of those created by the Constitution.

In the case of the Employment Security Commission, under Section 59-9-10, N.M.S.A., 1953 Comp., the members of the commission are appointed by the governor. Section 59-9-11, N.M.S.A., 1953 Comp., provides for the powers and duties of the commissioners. This commission is charged with executive duties and are clearly part of the executive function of the state government.

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