

**Opinion No. 59-151**

September 29, 1959

**BY:** HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Floyd Cross Personnel Director State Capitol Santa Fe, New Mexico

{\*231} This is in response to your request for an opinion on the following:

What agencies in the list submitted by you are included under the Personnel Act, being Chapter 205, Laws of 1959?

1. Section "E" of the Act reads as follows:

"Agency' means **any agency of the state government except:**

(1) the **legislature** and the **judiciary** and the personnel responsible to them;

(2) **educational and eleemosynary** institutions; and (3) the department of **health**, the department of **welfare**, and the **employment security commission.**" (Emphasis supplied)

2. It is to be noted that many executive departments and agencies may engage in both legislating and adjudicating to a certain extent. The making and promulgating of rules and regulations might, in the strict sense be termed legislating. So also holding hearings before various commissions, taking evidence and making rulings might be held to be adjudicating in the strictest interpretation of the term. However, these are secondary functions of those agencies and are acts necessary to the carrying out of their executive duties which is their primary function.

Departments, offices, boards, commissions, bureaus or state institutions which act on behalf of the state as an agent thereof and in the furtherance of state business is a state "agency". Purely investigative bodies who make no final decisions, but limit their function to fact-finding are not included within the meaning of the term.

The Act further exempts:

"(2) educational and eleemosynary institutions; . . ."

"Educational institution' is one which teaches and improves its pupils; a school, seminary, college, or educational establishment." **Lois Grunow Memorial Clinic v. Oglesby**, 22 P. 2d 1076, 42 Ariz. 98.

" educational institutions,' contemplates schools in the usual sense, that is, institutions of learning which exist independently as such, and have a definite curriculum or course

of study, and are designed to serve as the medium for imparting to students who attend them a knowledge of those things broadly covered within the field of education." **State ex rel Kaegel v. Holekamp**, Mo. App., 151 S.W. 2d 685.

Eleemosynary institutions are charitable institutions and include educational institutions.

" . . . 'eleemosynary' has come in the law to be interchangeable with the word 'charitable,' thus including educational institution." **People v. Cogswell**, 45 P. 270, 113 Cal. 129.

The exemption would therefore be only for the institutions of learning and charity. The Board of Education and Administrative offices of the education department would come under the Act.

As further strengthening this argument, we need only look at the third subsection under (E) to {232} see that had the Legislature intended any particular department to be exempt, it would have expressly so declared. This subsection exempts from the operation of the Act, the Health Department, Welfare Department and the Employment Security Commission. These need no further explanation.

In view of the above, it is my opinion that the following are not included under the Personnel Act:

1. Legislature
2. Legislative Council
3. Legislative Fiscal Analyst
4. District Judges
5. Law Library
6. Supreme Court
7. Attorney General
8. Commission on Uniformity of State Laws
9. Employment Security Commission
10. Fish and Wildlife Service
11. Intertribal Indian Ceremonial
12. Department of Public Welfare

13. Department of Public Health
14. Carrie Tingley Hospital
15. Los Lunas Hospital
16. Tuberculosis Hospital
17. Miners' Hospital
18. State Hospital
19. Museum of New Mexico
20. New Mexico Historical Society
21. Old Lincoln County Memorial Commission
22. Museum of International Folk Art
23. New Mexico State University
24. Eastern New Mexico University
25. Highlands University
26. Institute of Mining and Technology
27. New Mexico Military Institute
28. New Mexico Western University
29. Northern New Mexico Normal
30. New Mexico School for Visually Handicapped
31. University of New Mexico
32. New Mexico School for Deaf
33. Criminal Code Study Committee

The following agencies, boards, commissions, departments and committees are included under the Personnel Act:

1. New Mexico Compilation Commission

2. Supreme Court Building Commission
3. Auditor
4. Bureau of Revenue
5. Capitol Building Improvement Commission
6. Capitol Custodian
7. Department of Courtesy and Information
8. Department of Finance and Administration
9. State Investment Council
10. State Planning Office
11. Educational Retirement Board
12. Governor's (Staff)
13. Lieutenant Governor
14. Merit System Council
15. Motor Vehicle Department
16. Public Employees' Retirement Board
17. Records Control Division
18. Secretary of State
19. State Board of Finance
20. State Purchasing Agent
21. State Tax Commission
22. State Treasurer
23. Accountancy Board
24. Architects Examiners Board

25. State Bank Examiner
26. Barber Examiners Board
27. Bar Commission
28. Bar Examiners Board
29. Basic Science Board
30. Chiropractic Examiners Board
31. Collection Agency Board
32. Contractors License Board
33. Corporation Commission
34. Cosmetology Board
35. Dental Examiners Board
36. Dry Cleaning Board
37. Electrical Administrative Board
38. Embalmers and Funeral Directors Board
39. Fair Employment Practices Commission
- {\*233} 40. Fire Marshal
41. Labor and Industrial Commission
42. Liquified Petroleum Gas Commission
43. Medical Examiners Board
44. Nursing Board
45. Optometry Examiners Board
46. Osteopathy Examiners Board
47. Pharmacy Board

48. Physical Therapists Licensing Board
49. Plumbing Administrative Board
50. Podiatry Board
51. Professional Engineering and Land Surveyors Board
52. Public Service Commission
53. Racing Commission
54. Real Estate Board
55. State Mine Inspector
56. Superintendent of Insurance and Insurance Board
57. Superintendent of Weights and Measures
58. Veterinary Examiners
59. Cattle Sanitary Board
60. Dairy Industry Indemnity Board
61. Department of Development
62. Department of Game and Fish
63. New Mexico Forest Conservation Commission
64. Grasshopper Control Board
65. Land Commissioner
66. Oil Conservation Commission
67. Oil and Gas Central Accounting Commission
68. Park Commission
69. Sheep Sanitary Board
70. Soil Conservation Committee

71. State Engineer
72. Interstate Stream Commission
73. State Fair Commission
74. Commission on Alcoholism
75. Commission on Indian Affairs
76. Veteran's Service Commission
77. Adjutant General
78. State Armory Board
79. Boys' Industrial School
80. Civil Air Patrol
81. Civil Defense Department
82. Girls' Welfare Home
83. Parole Board
84. Penitentiary
85. Probation Officers
86. State Police
87. Youth Commission
88. Highway Department
89. Governor's Approval Committee
90. State Library Commission
91. Superintendent of Public Instruction
92. Vocational Education
93. Vocational Rehabilitation

94. Board of Educational Finance

95. State Department of Agriculture

96. Bureau of Mines and Mineral Resources

Article V, Section 14 of the New Mexico Statutes prior to the 1955 amendment would have exempted the Highway Department from the operation of this Act. However, the 1955 amendment having deleted the sentence granting exclusive authority of the Highway Department in all matters pertaining to Highway employees, it is my opinion that the Highway Department is included.

The Attorney General would ordinarily be included under the Act. However, Section 4-3-5, N.M.S.A., 1953 Comp. PS., expressly provides that the Attorney General may appoint the necessary number of Assistants "**together with stenographic clerical, and other necessary employees on a full or part time basis, at salaries to be fixed by him. . .**" This, quite clearly, vests authority over his employees in the Attorney General exclusively. It is to be noted that all the employees, including the Assistant Attorneys General, serve at the pleasure of the Attorney General.

B.J. Baggett,

Assistant Attorney General