

Opinion No. 61-124

December 4, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

TO: Mr. Willard E. Lewis, Jr., Chief, Local Government Division Department of Finance and Administration, Santa Fe, New Mexico

QUESTION

QUESTION

Are clerical personnel employed under Section 12-2-11 and who also serve as subregistrars to be considered State or county employees for purposes of administering the Vital Statistics Act?

CONCLUSION

County employees.

OPINION

ANALYSIS

In your request for an answer to the above question, you mentioned three recent opinions from this office which certain county officials are apparently having difficulty in reconciling. Actually these opinions do not conflict, and prior to specifically answering the question posed, we desire to so show as an aid to administering officials.

Opinion No. 60-238 held that for purposes of hiring and remuneration, persons employed pursuant to Section 12-2-11, N.M.S.A., 1953 Comp. (PS), are to be considered county employees. This is because Section 12-2-11, *supra*, which authorizes the employment of persons in addition to the district health officers to administer the health laws, provides that such employees are to be hired by the Board of County Commissioners and paid from the "county health fund", a fund raised at the county level through the levy of a property tax. See Section 12-3-35, N.M.S.A., 1953 Comp.

Opinion No. 61-8 held only that employees hired pursuant to Section 12-2-11, *supra*, are to be considered employees of the State Department of Public Health for purposes of Social Security eligibility. We therefore pointed out that the concept of employment is variable depending upon the context in which the question arises. Nowhere is this more true than in the case of health personnel over whom both State and county officials have certain areas of control. To a large extent, the decision in Opinion No. 61-8 was

based on Federal interpretation of the term "employee" as used in the Social Security Act.

In Opinion No. 61-81 we pointed out that under Section 12-4-31, N.M.S.A., 1953 Comp. (PS), if a person serving as subregistrar is also a regular employee of the State Department of Public Health, the fifty-cent allowance for each birth or death certificate registered must revert to the State Health Department.

We will now consider your specific inquiry, i.e., whether health personnel employed pursuant to Section 12-2-11, supra, are to be considered State or county employees for purposes of administering the Vital Statistics Act. It is somewhat difficult to answer this question since these employees, simply by virtue of employment under Section 12-2-11, supra, do not thereby have some automatic connection with administration of the Vital Statistics Act.

We assume that your inquiry results from a question arising as to distribution of the fifty-cent allowance for each birth and death registration. This is for the reason that if someone hired under Section 12-2-11, supra, who is also appointed a subregistrar, is, by virtue of his employment under Section 12-2-11, to be considered a State employee, the fifty-cent fees revert to the State Health Department.

While occupying a rather unique status, in most respects employees hired pursuant to Section 12-2-11, supra, are to be considered county employees. As pointed out earlier, they are to be so considered when dealing with questions of remuneration. Since that is what is ultimately involved here, these employees in their capacity as regular health personnel are county employees. When, however, they are also designated as subregistrars, they are State employees in their subregistrar capacity. The State Registrar, appointed by the State Director of Public Health under Section 12-4-26, N.M.S.A., 1953 Comp. (PS), appoints and removes subregistrars. Section 12-4-29, N.M.S.A., 1953 Comp. (PS).

But the dual-status role of such employees does not create any problem in regard to the fifty-cent registration allowance. Section 12-4-31, supra, requires that the fifty-cent fee revert to the State Health Department only when the subregistrar is also a regular employee of the Health Department. When the subregistrar is a county employee hired pursuant to Section 12-2-11, supra, the fifty-cent fee does not revert to the State Health Department.

In closing we also wish to mention that the statutory fifty-cent fee provision in the Vital Statistics Act does not Contravene Article X, Section 1 of the New Mexico Constitution, which prohibits county officers from receiving fees in addition to salary. Clerical personnel employed pursuant to Section 12-2-11, supra, do not fall within the county officer category.