

Opinion No. 64-126

September 28, 1964

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

TO: Miss Maralyn Budke, Assistant Fiscal Analyst, Legislative Finance Committee, State Capitol Building, Santa Fe, New Mexico

QUESTION

FACTS

In the appropriation to the State Police for the 53rd Fiscal Year, Chapter 2, Laws 1964, Second Special Session, the Legislature inserted the following proviso:

"It is the expressed intent of the legislature that the above appropriation is based on the assumption of a state police force, as defined in Section 39-2-3, New Mexico Statutes Annotated, 1953 Compilation, composed of 220 men; if the state police numbers on a daily average basis less than 220 men for any 180 day period, there shall be deducted from this appropriation an amount of \$ 7,000 multiplied by the number by which 220 exceeds such daily average, and provided further, that it is the intent of the legislature that salary increases be granted such state police personnel consistent with reasonable standards of merit and performance." (Emphasis added)

QUESTIONS

(1) Does this provision mean that at the conclusion of the 180-day period which commenced on July, 1, 1964, the reduction formula is to be implemented if during this period the state police force on an average daily basis was less than 220 officers?

(2) If so, would the process be repeated for the next 180-day period?

CONCLUSIONS

(1) No.

(2) No, see analysis.

OPINION

ANALYSIS

The legislature appropriated a sum of money for the 53rd fiscal year which was deemed sufficient to provide for a trained and equipped force of 220 State Police Officers.

However, the legislature apparently felt that there might be some difficulty in reaching this desired total strength. With this in mind, it set up the formula in the proviso for a reduction in the appropriation should this be the case.

The appropriation is for the entire fiscal year, not for any particular six-month period or periods. The way the formula is to operate is this: At the close of the 53rd fiscal year on June 30, 1965, there is to be a determination of whether or not for **any** consecutive 180-day period in the fiscal year the state police force had numbered, on a daily average basis, less than 220 men. If so, the reduction formula will be applied. If it is determined on June 30th that there was not any such consecutive 180-day period at **any** time during the 53rd fiscal year, there is to be no reduction in the appropriation. Of course, it may well be possible that the State Police will know in advance that the appropriation reduction will take place on June 30, 1964, because the consecutive 180-day period with a force less than 220 men on a daily average basis might occur relatively early in the fiscal year.