

Opinion No. 64-99

July 31, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Wayne C. Wolf, Assistant Attorney General

TO: John F. Otero, Director, State Apprenticeship Council, 137 East DeVargas Street, Santa Fe, New Mexico

QUESTION

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1. Is a university professor a member of the State Apprenticeship Council who is "otherwise compensated by public money," within the meaning of Section 59-7-15, N.M.S.A., 1953 Compilation, and therefore, ineligible for compensation for his attendance at council meetings?
2. May the university professor be reimbursed for per diem and travel expenses when traveling to and from State Apprenticeship Council meetings?

CONCLUSIONS

1. No.
2. Yes.

OPINION

ANALYSIS

Section 59-7-15, N.M.S.A., 1953 Compilation provides for the creation of a state apprenticeship council comprised of ten members; two ex officio members and eight voting members. The ex officio members are the commissioner of labor and the state supervisor of trade and industrial education. Of the eight voting members on the council, three represent employers, three represent employees and two represent the public. One of the members presently representing the public is a university professor. Section 59-7-15, supra, also allows "members of the council not otherwise compensated by public money . . . compensation at the rate of fifteen dollars a day." The professor's salary must be defined as "public money" in the broad sense of the term. (See Attorney General's Opinion No. 39 dated March 5, 1962.)

The issue, then, is whether the legislature intended the phrase, "members of the council not otherwise compensated by public money", to mean, "not otherwise compensated by public money from any source," or to mean, "not otherwise compensated by public

money for their participation on the council." It will be seen that the latter interpretation is the obvious intention of the legislature.

Statutes are to be "construed in the most beneficial way which the language will permit to prevent absurdity, hardship, or injustice. . . ." **State v. Llewellyn**, 23 N.M. 43, 69, 167 Pac. 414 (1917). By construing "otherwise compensated by public money" in its broadest sense, to include all public money, it is inevitable that absurd, harsh and unjust results might occur. Examples of such results are numerous. A highway contractor, appointed to the council, as a member representing employers, would be ineligible to receive compensation for his services to the council as he is "compensated for his work by public moneys." Or, a retired state employee who receives a state pension would be ineligible for compensation as he is being compensated by public moneys for past services rendered. Or, as here, a university professor giving up his own time to attend meetings would go uncompensated. Some well qualified individuals might have to refuse appointment to the council if such a reading is given this section. Certainly this could not have been the intention of the legislature.

In order to reach a reasonable interpretation of the phrase, "not otherwise compensated by public moneys", it would seem to follow that the legislature intended to limit the individuals "not otherwise compensated by public money" to those who are members of the council as a direct result of their particular public office and not those members of the council who are public servants serving the council on a voluntary basis.

Since the university professor is not a member of the council as a direct result of his position with the state, he is not already compensated by public money for his services as a member of the council. He is a member who may be compensated at the rate of fifteen dollars a day for each meeting attended. This is not true for the labor commissioner and the state supervisor of trade and industrial education. They are members of the council as a direct result of their particular office, and therefore are already "otherwise compensated by public moneys."

In answer to your second question, it would seem to follow that since the university professor is not a member of the council who is "otherwise compensated by public money," he is a member of the council who may also be paid necessary traveling and other expenses while engaged in the performance of his duties to the same extent as prescribed by law for officials of the state. (Section 59-7-15, N.M.S.A., 1953 Compilation). Section 11-4-4, N.M.S.A., 1953 Compilation (P.S.), allows officials of the state not more than \$ 10 per diem while traveling within the state, and 10 cents per mile for travel when using a privately owned automobile.