

Opinion No. 65-82

May 28, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

TO: Mr. Ruben Miera, Director, Dep't of Courtesy and Information, 1300 Osage, Santa Fe, New Mexico

QUESTION

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Is Section 5-4-3, N.M.S.A., 1953 Compilation violated when an employee of the Department of Courtesy and Information sells automobile license plates or issues Motor Vehicle Department permits and performs related services at the office of the Department of Motor Vehicles and other agencies?

CONCLUSIONS

No.

OPINION

{*144} ANALYSIS

The real question posed is, may an employee of one state agency perform his duties at the office of another agency without violating Section 5-4-3, N.M.S.A., 1953 Compilation. This Section provides that the Governor is authorized, subject to the approval of the State Board of Finance to temporarily transfer state employees from one office, department or institution of the State to another such office, department or institution. There are no other statutes dealing with the temporary transfer of State employees.

Section 5-4-3, supra, was the subject of Attorney General Opinion No. 57-94 issued May 13, 1957. That Opinion ruled that the Governor could only transfer temporarily and with approval of the Board of Finance and contained this language.

"It must be remembered that when appropriations are made to a department, the Legislature necessarily vests a great amount of discretion in the particular department head over the expenditure of funds so appropriated. We think it follows that the power to employ and discharge is vested in the department head having the control of said appropriations. In respects to these matters of authority and discretion, created by legislative enactment, the Governor seeks to interfere. This he may not do . . ."

It is our opinion that Section 5-4-3, supra, is a limited grant of power to the governor and not a limitation on the power of the respective State department heads to transfer their employees to another department.

We hasten to add, however, that an employee should only be assigned when it will in some way accomplish the business of the lending agency.

As you noted in your letter, the Department of Courtesy and Information not only performs a primary mission of its own but in addition performs many services for other state agencies including the Department of Motor Vehicles, State Corporation Commission and the Gasoline Tax Division of the Bureau of Revenue. Because your Department is required to perform these duties for other agencies it is our opinion that the situation you have described in your question is not illegal.