

Opinion No. 12-948

October 8, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Wm. G. Sargent, State Auditor, Santa Fe, N. M.

SALARIES OF STATE EMPLOYES.

Where a state employe accepts employment at a salary fixed by law, he cannot receive from the public treasury any additional salary for that employment.

OPINION

{*105} On the 7th of September I wrote to you in answer to an inquiry for my official opinion as to whether the head of a department can pay an employe an additional salary from the contingent fund of such department where the salary of the employe is fixed by statute; and I said to you, in substance, that if an employe accepts employment at a salary fixed by law, he gets that salary whether he does much or little work, and has no right to receive from the public treasury any additional salary for that employment. A few days ago you called my attention to an opinion which I gave to the Board of Penitentiary Commissioners on May 19, 1909, which had been cited to you by the Penitentiary Board, and which at first glance appears to be somewhat inconsistent with the rule announced in my letter to you of September 7th. I think, however, that they are not irreconcilable when carefully considered, although I would have worded my letter to you somewhat differently if I had had the earlier opinion in mind.

In my letter to you I said that such an employe as was supposed "had no right to receive from the public treasury any additional salary for that employment." In my opinion of May 19, 1909, I used the following language:

"I see no reason to doubt the power of the board to declare and fix the duties of each officer and employer for which he is to be paid the amount of money appropriated by the legislature, and if any such person performs work in addition to that imposed upon him by the rules of the board, there can be no good reason why he should not receive extra compensation therefor. There can be no doubt that if the officers and employes enumerated in the appropriation bills are not adequate to the performance {*106} of all necessary labor, the board has power to employ other persons and pay them out of the general appropriation for penitentiary maintenance, and it must be equally true that, from the same appropriation, the board can lawfully pay, for extra work of regular employes, compensation in addition to that specifically appropriated by the legislature."

I do not think this language should be understood as attempting to justify the payment of additional salary for the employment indicated by the statute, but only as applying to extra work of regular employes. For instance, I do not think the Penitentiary Board could

pay its clerk the salary fixed in the statute of \$ 50.00 a month, and then pay him another \$ 50.00 for his services as such clerk; but if in addition to his duties as clerk, as fixed by the board, he should perform other and different duties, he could be paid an additional amount for those other and different duties.