

Opinion No. 31-334

December 17, 1931

BY: E. K. Neumann, Attorney General

TO: Hon. Arsenio Velarde, State Auditor, Santa Fe, New Mexico.

{*123} Your letter of December 16th requests an opinion concerning your liability in accepting and approving assignments of salary of state employees.

You state first:

"1. Several parties have been assigned their salary from three months to a year in advance. In the event of the death of the assignor, or the discontinuance of his services before the assignment is satisfied, would I be liable for the unpaid balance due under said assignment?"

The answer to this question is in the negative in so far as unearned salary is concerned. If the salary has been earned and the assignment has not been withdrawn, we believe it operative in the event of assignor's death and such earned salary should be paid to the assignee.

No liability rests upon you for any balance due from assignor to assignee, except such balance as is earned and subject to such assignment. If the assignor dies or his services are discontinued, of course, there is no further salary upon which the assignments could operate and you would not be concerned with the original debt between the parties.

Your second question is as follows:

"2. In the event that I approve an assignment, and file same, and I overlook the payment of the money due the assignee, due to a department bringing in a payroll improperly made out, not deducting the amount of the assignment from the salary due the assignor, would I be liable for the amount of the assignment so overlooked?"

We think you would be liable in a case of this kind. You have notice of such assignment and it is your duty to ascertain if it is properly shown upon the payroll. Liability for negligence would attach otherwise.

Also Section 8-101, 1929 Compilation concerning assignments should be followed in all cases before approval of same by you.

By Frank H. Patton,

Asst. Attorney General