

Opinion No. 33-576

April 15, 1933

BY: E. K. NEUMANN, Attorney General

TO: Margaret M. Lane, Sec'y., El Rito Normal, 608 North Cedar, Albuquerque, New Mexico.

{*36} This is in reply to your letter of April 10, 1933, in which you ask whether or not it is permissible to pay a salary to the Secretary of the Board of Regents of the El Rito Normal.

There is specific statutory authorization for the payment of secretaries of certain state boards. However, in the case of secretary of the board of regents of El Rito Normal there is no such statutory authorization. Sections 120-1918, 130-606, 130-607 and 130-906 of the 1929 Code refer to the powers and duties of this board. Section 130-607 gives the board power to hire "employees." I do not think, however, that the secretary of a state board is an "employee" in the sense used in that section. Such a position is, in my opinion, a public office and the holder thereof a public officer.

46 C.P. 922.

The right of a public officer to compensation for his services depends upon provision therefor being made by the legislature.

"Public officers have no claim for official services rendered except where, and to the extent that, compensation is provided by law, and, when no compensation is so provided, the rendition of such services is deemed to be gratuitous." 46 C.J. 1014.

You also ask the following question:

"Having made bond, am I responsible for the difference between the securities made by the bank and the deposits (should they be in excess of these securities) in case of a bank failure."

Section 112-109 of the 1929 Code provides, among other things, that "no deposit of public money secured by the deposit of securities in this section provided shall exceed the actual market value of the securities so deposited." In view of this provision and the general law with respect to such matters, (46 C.J. 1040), I am of the opinion that in case of loss of public moneys under your care, through a bank failure, you should be responsible on your bond for the difference between the amount deposited and the actual market value of the securities put up as collateral.

By: QUINCY D. ADAMS,

Asst. Attorney General