

Opinion No. 41-3801

May 22, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. H. R. Rodgers Commissioner of Public Lands State Land Office Santa Fe, New Mexico

{*66} This will acknowledge receipt of your letter of May 21 wherein you first inquire if Chapter 97-101, of the New Mexico Statutes Annotated, 1929 Compilation, is in effect at this time, and if so, if it is therefore mandatory that the State Geologist's salary be paid from the State Land Office maintenance fund, or if the geologist's salary may be paid from the Oil Conservation Commission fund, as provided by Chapter 72, New Mexico Session Laws of 1935.

Chapter 97-101 of the New Mexico Statutes Annotated, 1929 Compilation, has not been repealed, is still upon the books and is the law, unless the same has been repealed by implication. In order for us to obtain a clear perspective of the instant question, it will be necessary that we make a brief {*67} review of the law in order to arrive at the legislative intent.

Chapter 97-101 of the New Mexico Statutes, Annotated, 1929 Compilation, reads in part as follows, to-wit:

"* * * The salary of the geologist shall be not more than three thousand six hundred dollars (\$ 3,600.00) per annum, and the salaries of the other employees of the geologist's office shall be as the state land commissioner approves in each instance, which salaries and expenses shall be paid out of the state land office maintenance fund."

The above quoted language found in the aforesaid section is entirely clear, and prior to the time that Chapter 72 of the New Mexico Session Laws of 1935 was enacted, there could have been no question in view of the foregoing provisions but what it was mandatory for the State geologist to be paid out of the "State Land Office maintenance fund." In 1935, however, the legislature, by virtue of Chapter 72, Section 3, enacted the following provision:

"* * * No salary or compensation shall be paid any member of the Commission for his services as a member thereof, but the actual and necessary expenses of the members of said Commission, incurred or expended in the performance of the duties imposed on said Commission, shall be paid out of the Oil Conservation Fund hereinafter created, **provided, that if the State Geologist shall hold any other state office his salary may be adjusted by the Governor, and such Geologist paid part of his salary out of the Oil Conservation Fund.** * * * "

In view of that portion of Section 3 of Chapter 72 of the Session Laws of 1935, above quoted, the question now is to determine whether or not the 1935 provision repeals or amends by implication the provisions of Chapter 97-101 of the New Mexico Statutes Annotated, 1929 Compilation, supra.

We must admit that the question which you have propounded is most perplexing. The legislature is conclusively presumed to have had full knowledge of the provisions found in Chapter 97-101 of the 1929 Compilation at the time that they enacted Chapter 72, Session Laws of 1935. The intent of the legislature, however, laying aside this conclusion, is again strongly exemplified by virtue of the fact that they saw fit to repeal each section under Article I of Chapter 97, except Section 97-101.

In view of the foregoing express and specific conduct on the part of the legislature, can it be logically asserted, in view of the action taken by the Session Laws of 1935, that it was the intent of the legislature to permit the State Geologist to receive a part of his salary out of the Oil Conservation Fund? Let us minutely analyze Section 3, Chapter 72 of the Session Laws of 1935. It is specifically provided by the 1935 laws that the State Geologist is to be a member of the Oil Conservation Commission and that the members thereof are to receive no salary or compensation other than their actual and necessary expenses, which expenses are to be paid out of the Oil Conservation Fund. There is an additional provision, however, which relates to the State Geologist and reads as follows, to-wit:

"Provided that if the State Geologist shall hold any other state office his salary may be adjusted by the Governor, and such Geologist paid part of his salary out of the Oil Conservation Fund."

When the legislature enacted this quoted exception with reference to members of the Oil Conservation Commission, what was their intention? Did they intend that the State Geologist should be paid a part of his salary out of the Oil Conservation Fund for the time devoted to serving on the said Commission, or was it their intention to disallow the State Geologist any emoluments from the Oil Conservation Fund except his actual and necessary expenses, unless he should hold an additional state job other than as a member of the Commission and a State Geologist?

The language of the statute involved is certainly not clear, and frankly it is quite speculative on the writer's part to unhesitatingly say what the legislative intent was in regard to the instant question. It occurs to me, however, that an absurd construction would be given the above quoted statutes unless I hold that it was the intent of the legislature to allow on approval by the Governor a portion of the State Geologist's salary to be paid out of the Oil Conservation Fund. To my mind, this was the legislative intent, and I so hold.

In passing, however, I wish to call to your attention the fact that by virtue of Section 3, Chapter 72 of the Session Laws of 1935, that the Governor, in any event, cannot allow

the State Geologist his entire salary from the Oil Conservation Fund, but can only allow him a part of his salary out of said fund, and this in the Governor's discretion.

In conclusion, I wish to call to your attention the fact that our Supreme Court has never passed on this question, and although the writer has done so, he has been hesitant in rendering any dogmatic opinion on the instant question.

Trusting that the foregoing sufficiently answers your inquiry, I am

By HOWARD F. HOUK,

Asst. Atty. General