

**Opinion No. 42-4144**

August 26, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. R. H. Reece President New Mexico School of Mines Socorro, New Mexico

{\*238} Your letter of August 18, 1942 requesting opinion as to whether a donation of two or three months salary may be made to Mr. Farrar as compensation for his illness, which has rendered him unable to perform his duties, has been referred to me for reply.

Article IV, Section 27 of the New Mexico Constitution provides:

"No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made \* \* \* \*"

In view of this provision, I am of the opinion that to donate Mr. Farrar an additional two or three months salary would come within the provision of extra compensation after contract made. For a similar ruling by this office, we refer you to Attorney General's Opinion No. 4085.

Further, Article IX, Section 14, among other things, prohibits the state from directly or indirectly lending or pledging its credit, or making any donation to or in aid of any person. According to Article XII, Section 3, educational institutions, such as the School of Mines, are under the exclusive control of the State. Therefore, a donation by the School of Mines would come under the provision contained in Article IX, Section 14 of the New Mexico Constitution, forbidding the State from directly or indirectly making a donation to or in aid of any person.

It is, therefore, my opinion that the Board of Regents may not, in view of our Constitution, make this donation to Mr. Farrar.

Your letter of August 22, 1942, {\*239} appears to request a further opinion as to whether any payments may be made to Mr. Farrar under the pension plan provided in Chapter 210 of the Laws of 1941.

Section 4 of such act provides that the Board of Regents shall have the right to give members of the faculty, who have become disabled due to illness, a stated proportion of the maximum pension provided in Section 2, if prior to such illness they had been employed for at least five years by the institution granting the pension. In view of statements contained in your letter, it does not positively appear that Mr. Farrar had completed his five years of service at the time he became incapacitated. It is my opinion that if Mr. Farrar failed even by one day to complete five years of employment, he could not be eligible for any benefits under this act.

It is stated that Mr. Farrar was under contract at the time he became incapacitated. If such contract went into effect subsequent to April 18, 1941, and if at the time he became incapacitated he had been in the employ of the School of Mines at least five years, the Board of Regents may, at their discretion, award Mr. Farrar a pension as provided and limited by Section 4. Since the Board of Regents does not have to grant the maximum pension allowed, I see no reason why the Board of Regents could not limit payments to be made under such a plan to an amount equal to two or three months salary. If the contract Mr. Farrar was employed under was in effect on April 18, 1941, he will in no event be entitled to benefits of Section 4, since such section as applied to Mr. Farrar would be unconstitutional in view of Article IV, Section 27 of the Constitution of New Mexico, which prohibits a law providing for extra compensation **after** a contract made.

Although the School of Mines has not made any rule or regulation concerning a retirement fund or plan as per Section 5 of this act, nor has the board specifically budgeted to pay any pension as provided in Chapter 210 of the Laws of 1941, it is still possible that you might be able to pay such pension from the amount set up in your budget and contingent expenses at page 466, Chapter 212, Laws of 1941. For a full opinion on this question, see Attorney General's Opinions No. 3850 and 3982.

By HARRY L. BIGBEE,

Asst. Atty. General