

**Opinion No. 44-4628**

December 26, 1944

**BY:** C. C. McCULLOH, Attorney General

**TO:** J. W. Branson, Dean of the College, New Mexico College of Agriculture and Mechanic Arts, State College, New Mexico

I have your letter of December 20, 1944 wherein you inquire whether or not the persons administering the Feed and Fertilizer Act, the Dairy and Dairy Products Act, and the Fruit and Vegetable Standardization Act are employees of the State College within the contemplation of Chapter 210 of the Session Laws of 1941 providing for the setting up of a retirement system for the benefit of the employees of such institution.

It is noted that the various acts involved are all set up under the control of the Board of Regents of the New Mexico College of Agriculture and Mechanic Arts, and are not set up specifically as a part of the College. However, it is noted that all of the acts are administered out of fees provided for in the acts which are paid to the State College for the purpose of administering the acts.

Section 49-1911 of the New Mexico 1941 Compilation provides in connection with Commercial Feeding Stuffs:

All moneys collected under the provisions of this act shall be deposited in the treasury of the New Mexico College of Agriculture and Mechanic Arts, and be expended for the purpose of administering the provisions of this act upon the order of said regents in the same manner as other funds of the said college."

The last sentence of Section 48-1204 provides in connection with the Commercial Fertilizer Act:

"All moneys collected under the provisions of this act shall be deposited in the treasury of the New Mexico College of Agriculture and Mechanic Arts, and be expended for the purpose of administering the provisions of this act upon the order of said regents in the same manner as other funds of the said college."

Subsection C of Section 49-2109 provides in connection with the administration of the Dairies and Dairy Products Act:

"All fees for permits or examinations collected by the dairy commissioner under the provisions of this act (article) shall be deposited by said dairy commissioner with the accountant of the New Mexico College of Agriculture and Mechanic Arts and shall be kept in separate account to be known as the Dairy Commissioner's Fund. Expenditures from this fund shall be made in the same manner as from other funds in the hands of said accountant, but such expenditure shall be made only for the maintenance and

support of the dairy commissioner's office and the necessary expenses connected therewith. The dairy commissioner shall make a full and complete accounting for such funds in his annual report provided for by this act (article)."

The Fruit and Vegetable Standardization Act, Chapter 148, Article 18 of the New Mexico 1941 Compilation, is set up on the same theory as the other acts although there is an appropriation in the Act for the administration of the provisions of the Act, and also in Section 48-1808 there is a provision for the depositing of funds received from the Act in a revolving fund.

While it is true that the administration of the various acts set out under the Board of Regents of the New Mexico College of Agriculture and Mechanic Arts are not specifically under the College itself, in view of the provisions concerning the allocations of the monies derived from such acts, it would appear that the intention was to provide that such acts should in fact be administered by the State College and merely designated the governing body of such college to administer the Act. The employees in most, if not all, instances are paid the same as other employees of the state college and would, therefore, clearly appear to be employees within the contemplation of Chapter 210 of the Session Laws of 1941.

By HARRY L. BIGBEE,

Asst. Atty. General