

Opinion No. 45-4651

February 9, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Benjamin D. Luchini Chairman-Executive Director Employment Security Commission Albuquerque, New Mexico

{*16} I have your letter of January 22, 1945, wherein you call to our attention the duties imposed upon the State Treasurer under Section 57-809 of the 1941 Compilation. In view of this, you request an opinion of this office concerning whether, under the present state law, the State Treasurer is prohibited from receiving, besides his regular salary, additional compensation from the commission; and whether specific authority in the unemployment compensation statute is necessary for the commission to pay him such compensation.

In connection with your first question, I call to your attention, and enclose herewith, Opinion No 4293, formerly given by this office, wherein it was held that it was legal, under the present state law, to pay the State Treasurer for services required of him under Section 57-809.

In this connection, I wish to further call to your attention that the State Board of Finance, since the Unemployment Compensation Act went into effect has, at all times, provided compensation for the State Treasurer when performing such duties.

As you know, there has, at all times, been on the State Board of Finance attorneys of the highest reputation of this state, such as J. O. Seth, Will Keleher and H. A. Kiker. All of these attorneys have, both before and after the giving of this official opinion, recognized that under the state law it not only was legal to pay the State Treasurer for such services, but further that the State Treasurer could no be expected to perform such duties without being given compensation for same, and it is my opinion that the State Treasurer cannot be expected to perform such duties without compensation in view of all the facts involved in this situation.

I further wish to point out that other Federal moneys handled for somewhat similar purposes, such as the Welfare funds, are not handled by the State Treasurer, and the Welfare Department pays for such services as a regular matter, and the State Treasurer has no duties or obligations in connection with this type of funds. It is therefore clear that there are no similar funds of the State handled by the State Treasurer in the manner contemplated by the Unemployment Compensation Law, which the State Treasurer is required to perform as State Treasurer. It is the opinion of this office, and has obviously been the opinion of the Board of Finance, that the duties imposed upon the State Treasurer are of a similar nature to those imposed upon other persons under the Welfare Act, and should be paid for separately, the same as is done in administering the funds of the Welfare Department.

It is further my opinion that since the services required by the State Treasurer are in connection with the handling of the funds of your department, that the salary of the State Treasurer in connection with such duties should be paid out of such funds, and your department should not require that the Finance Board assume this obligation and pay such salary out of the General Funds of the State when, in fact, such salary should be paid out of the funds of your department, which receives the benefits of these services.

By HARRY L. BIGBEE,

Asst. Atty. General