

## Opinion No. 45-4779

August 25, 1945

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

**TO:** Dr. James R. Scott, Director Department of Public Health Santa Fe, New Mexico

{\*124} We are in receipt of your letter of August 18, 1945, in which you {\*125} state that from time to time District Health Officers wish to take vacations, and that upon taking such vacations, the District Health Officers arrange to have a physician in each county in their districts act as Deputy Health Officer for the individual county without remuneration. You ask our opinion as to whether it would be within the law.

"(1) To pay the regular district health officer his salary while away from duty on earned annual leave, and

"(2) To pay each deputy health officer, acting for the regular district health officer, for actual travel necessary to preserve the public health, upon vouchers properly completed and presented to the State Auditor in an amount not to exceed \$ 100 per month (see Section 6 of this law) for the District?"

Section 71-208 of the N.M. 1941 Compilation provides, in part, as follows:

"The district health officer when temporarily disabled by illness or accident, or when upon vacation or when for any cause he is physically unable to fulfill all or any of his official duties shall appoint a deputy who without extra expense to the State shall perform the duties of the district health officer in the district for which he is appointed deputy. \* \* \*"

The regulations of the State Board of Finance provide for the accumulation of vacations, with pay, for all employees of departments functioning under the laws of the State of New Mexico, accumulated at the rate of 1 1/4 days per month. These regulations, together with the language "when upon vacation", certainly authorize the District Health Officers to take vacations with pay.

In answer to your second question, the only limitation imposed upon the appointed Deputy is that he shall serve without "extra" expense to the State. Since the District Health Officer would, of necessity, incur expenses for which he would be entitled to reimbursement, there would be no additional expense to the State if these expenses were incurred by the Deputy District Health Officer, or several Deputy District Health Officers, operating in each county.

In view of the foregoing, it is my opinion that the District Health Officer may take a vacation with pay for the number of days he has accumulated at 1 1/4 days per month. It is further my opinion that any Deputy District Health Officer appointed during such

vacation period would be entitled to reimbursement for his actual necessary expenses incurred in discharging the duties of such office.

By ROBERT W. WARD,

Asst. Atty. General