

Opinion No. 45-4802

October 5, 1945

BY: C. C. McCULLOH, Attorney General

TO: Benjamin D. Luchini Chairman-Executive Director Employment Security
Commission P. O. Box 1301 Albuquerque, New Mexico

{*143} We are in receipt of your letter of September 27, 1945, in which you ask our opinion as to the legality of your receiving a separate salary from the federal government for administering the G. I. Bill of Rights (Servicemen's Re-Adjustment Act of 1944, Public Law 346, 79th Congress) in the State of New Mexico.

It does not appear that Article 4, Section 27 of the Constitution has any application to you in that you are not an elected state officer. (See *State ex rel Gilbert v. Board of County Commissioners*, 29 N.M. 209). However, the problem is just the same in that Section 57-810 of the 1941 Compilation provides that the executive director of the Employment Security Commission shall receive a salary fixed by the governor not to exceed \$ 6,000.00 per year. Thus, by virtue of this section, you could not receive any sum in addition to \$ 6,000.00 for performing the duties imposed upon you by the Unemployment Compensation Act.

Turning now to the G. I. Bill of Rights, we find that sub-chapter V., 38 U.S.C.A. 697 authorizes the Veterans' Administration to enter into contracts or agreements with private or public agencies or persons for necessary services.

From your letter, it appears that on September 1, 1944 the Employment Security Commission entered into an agreement with the Veterans' Administration for handling certain phases of the G. I. Bill of Rights within the State of New Mexico. Thus, if you received a salary for the services imposed upon you in this manner you could be receiving the same not for performing the services imposed upon you by the Unemployment Compensation Law, but rather would be receiving compensation from an entirely different source for performing entirely separate duties, that is to say, for performing the duties arising under the G. I. Bill of Rights.

The situation is very similar to that passed upon by this office in Opinion No. 4366 wherein it was held that Clerks of the District Court could receive the fees paid them when acting as Clerk of the Federal Naturalization Courts, since they were not acting in their capacity of Clerks of the State Court, but instead held a distinct federal employment.

The situation is also similar to that passed upon in Opinion No. 4293 in which it was held that the State Treasurer could receive a separate salary for acting as treasurer of the Unemployment Compensation Fund, and Opinion No. 4031 relating to the legality of

the Justices of the Supreme Court receiving compensation for acting as custodians of the state Law Library.

In view of the foregoing, it is my opinion that there is no prohibition in the laws of the State of New Mexico or the Constitution which would prevent you from receiving a separate salary for performing the services imposed upon you by the G. I. Bill of Rights.

By ROBERT W. WARD,

Asst. Atty. General