

Opinion No. 66-32

March 16, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

TO: Mr. Harry W. Wugalter, Chief, Public School Finance Division, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

QUESTION

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Is it permissible for a school employee contracted by a local board of education for employment for a specified period of time, to also be employed by a community action group to render services for a Federal program at the same time he is supposed to be rendering a service to the school district and receive compensation from both?

CONCLUSION

No.

OPINION

{*40} ANALYSIS

In answering this question we will assume the following facts as given to us. As we understand the situation, the employee of the school system has been hired by the board of education under a contract to provide full time employment over a specified period of time. The duration of the contract period may vary from 9 to 12 months and is specified by contract. In some instances employees who have contracts having a duration of 9 months only, receive pay over a 12 month period. The pay received during the months after the expiration of the working period of the contract is pay which was earned during the actual working period of the contract.

During that period of time when the employee of the school board is employed under a contract, and when he is required by the terms of that contract to work full time for the school board, it is understood that he is employed by a community action group to render services in a Federal program which is supervised by that group. The time and hours during which the employee must work for the school board are the same time and hours that he is required to perform his duties for the community action group.

It is our opinion that the employee could not be employed by both agencies and receive compensation from both as the positions since the positions are incompatible. There have been many opinions from this office dealing with the question of incompatibility of

two positions. See Attorney General's Opinions, 58-38, 58-237, 58-228, 58-221. Each of these opinions relied to a large extent on the case of **Haymaker v. State**, 22 N.M. 400. In that case the Court considered the issue of incompatibility and determined that incompatibility could result from any of the following factors:

"The incompatibility between two offices, which upon the acceptance of the one by the incumbent of the other operates to vacate the latter, is not simply a physical impossibility to discharge the duties of both offices at the same time, but it is an inconsistency in the functions of the two offices, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both."

From the language contained in the **Haymaker** case supra, it is apparent that if it is physically impossible for the employee to perform both jobs due to the fact that the requirements for working time are the same under both jobs the positions would be incompatible. Such being the case a person may not be employed in both positions at the same time and consequently cannot be paid for both jobs.