

Personnel Act

[NMSA 1978, Sections 10-9-1 to 10-9-25]

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10-9-1. Short title.

Chapter 10, Article 9 NMSA 1978 may be cited as the "Personnel Act".

History: 1953 Comp., § 5-4-28, enacted by Laws 1961, ch. 240, § 1; 2009, ch. 76, § 1.

Meaning of "this act". — The term "this act", referred to in this section, refers to Laws 1961, ch. 240, the provisions of which are presently compiled as 10-9-1 to 10-9-4, 10-9-8 to 10-9-10, 10-9-12, 10-9-13 and 10-9-15 to 10-9-17 and 10-9-20 to 10-9-25 NMSA 1978.

The 2009 amendment, effective June 19, 2009, changed the reference to the act to the Chapter and Article of NMSA 1978.

ANNOTATION

Act preemptive of collective bargaining. — Where the legislature has undertaken to act to regulate employment, such action preempts the authority of the state agency to engage in collective bargaining, and the purpose of the Personnel Act is inconsistent with the idea of collective bargaining. 1987 Op. Att'y Gen. No. 87-41 (overruling and withdrawing 1971 Op. Att'y Gen. No. 71-96).

Even if the legislature could delegate its power to make law concerning public sector collective bargaining, and even if it intended to do so in this act, it failed to do so properly, and the Rules for Labor-Management Relations promulgated by the personnel board are therefore void and a nullity, since the Personnel Act does not mention collective bargaining, much less any standards to guide the board in fashioning the RLMR. 1987 Op. Att'y Gen. No. 87-41.

Rules constituting unlawful delegation of authority. — The Rules for Labor-Management Relations promulgated by the personnel board unlawfully delegate the board's authority over personnel matters that the legislature has placed with the board. 1987 Op. Att'y Gen. No. 87-41.

Medical center covered by act. — The Los Lunas state hospital and training school (now the Los Lunas medical cen-

ter) is a state institution and it falls within the category of departments covered by the Personnel Act. 1961-62 Op. Att'y Gen. No. 61-80.

State land office. — The state land office is presently subject to the Personnel Act. 1969 Op. Att'y Gen. No. 69-99.

Agencies already with merit systems. — Nothing in the Personnel Act indicates that agencies that have adopted merit systems are thereby exempted from the operation of the Personnel Act. 1959-60 Op. Att'y Gen. No. 60-229 (decided under former law).

Application to nonexempt employees of retiree health care authority. — Although the Retiree Health Care Act provides in 10-7C-7 NMSA 1978 that the retiree health care authority's board may "employ or contract for persons to assist it . . . and determine the duties and compensation of these employees," that authority does not conflict with the Personnel Act and, therefore, the Personnel Act applies to nonexempt employees of the agency. 1991 Op. Att'y Gen. No. 91-06.

Attorney general barred from raising defenses. — Doctrine of offensive collateral estoppel barred the attorney general from raising as defenses to an action for a declaration of the validity of a collective bargaining agreement essentially the same defenses to essentially the same substantive contract provisions he raised at the district court level in a prior case involving identical subject matter. Local 2839 of AFSCME v. Udall, 111 N.M. 432, 806 P.2d 572 (1991).

Law reviews. — For note, "Public Labor Disputes - A Suggested Approach for New Mexico," see 1 N.M.L. Rev. 281 (1971).

For comment, "Contemplating the Dilemma of Government as Speaker: Judicially Identified Limits on Government Speech in the Context of Carter v. City of Las Cruces," see 27 N.M.L. Rev. 517 (1997).

10-9-2. Purpose of act; enactment under constitution.

The purpose of the Personnel Act [10-9-1 NMSA 1978] is to establish for New Mexico a system of personnel administration based solely on qualification and ability, which will provide greater economy

and efficiency in the management of state affairs. The Personnel Act is enacted under and pursuant to the provisions of Article 7, Section 2 of the constitution of New Mexico, as amended.

History: 1953 Comp., § 5-4-29, enacted by Laws 1961, ch. 240, § 2; 1963, ch. 200, § 1.

ANNOTATION

Legislative intent. — In enacting the Personnel Act it was the desire of the legislature to insulate in some manner the paid state employee from the whims and caprice of the political election so as to provide continuity of government in a changing environment. 1963-64 Op. Att'y Gen. No. 64-7.

Legislature intended balance between internal and statewide administration. — The legislature intended to strike a balance between the inherent power of a state agency or department to act administratively to adjust or organize itself internally so as to more effectively and efficiently carry out its duties, and the statutory objective of establishing and creating an effective system of state personnel administration. 1963-64 Op. Att'y Gen. No. 63-33.

Ability of government to be enhanced. — The legislature wished to enhance the ability of government by insuring that the "sifting system" of the public election be replaced by objective examinations to assure that competent citizens are initially selected for the "insulated" positions. 1963-64 Op. Att'y Gen. No. 64-7.

Purpose and interpretation of Personnel Act. — The Personnel Act has for its basic purpose the furtherance of economy and efficiency in state government. To achieve this purpose and implement the objectives of the act, the provisions providing for the right of an administrative hearing and judicial review should not be narrowly interpreted so as to restrict such a view. *Montoya v. Department of Fin. & Admin.*, 98 N.M. 408, 649 P.2d 476 (Ct. App. 1982).

Merit system provided. — The Personnel Act provides for a merit system, but not a seniority system. 1965 Op. Att'y Gen. No. 65-78A.

State agencies not to engage in collective bargaining. — A collective bargaining agreement between the division of vocational rehabilitation and the American Federation of State, County and Municipal Employees is void, as it is illegal for state agencies governed by the provisions of this article to engage in collective bargaining. 1987 Op. Att'y Gen. No. 87-56.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Refusal to submit to polygraph examination as ground for discharge or suspension of public employees or officers, 15 A.L.R.4th 1207.

81A C.J.S. States § 86.

10-9-3. Definitions.

As used in the Personnel Act [10-9-1 NMSA 1978]:

- A. "director" means the personnel director;
- B. "board" means the personnel board;
- C. "service" means the state personnel service created by the Personnel Act, and includes all positions covered by the Personnel Act;
- D. "position" means any state office, job, or position of employment;
- E. "employer" means any authority having power to fill positions, in an agency;
- F. "agency" means any state department, bureau, division, branch or administrative group which is under the same employer;
- G. "class" means a group of positions similar enough in powers and responsibilities that they can be covered by the same qualifications and rate of pay;
- H. "test" means a test of the qualifications, fitness and ability, and includes tests that are written, oral, physical or in the form of a demonstration of skill or any combination thereof;
- I. "employee" means a person in a position in the service who has completed his probationary period; and
- J. "probationer" means a person in a position in the service who is still in the probationary period for that position.

History: 1953 Comp., § 5-4-30, enacted by Laws 1961, ch. 240, § 3.

ANNOTATION

Effect on person contemplated by 28-15-1 NMSA 1978. — If a person contemplated by 28-15-1 NMSA 1978 has gained the status of an "employee" as that term is defined by this section and the personnel board rules, he will have

additional rights under the state personnel board rules that a "probationer" would not. 1969 Op. Att'y Gen. No. 69-108.

Employees not entitled to participate. — Since the employees of an intercommunity gas association worked for a corporation controlled by three separate municipalities rather than for the state itself, such employees were not entitled to participate under the provisions of the State Personnel Act. 1966 Op. Att'y Gen. No. 66-7.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81A C.J.S. States § 86.

10-9-4. Coverage of service.

The Personnel Act [10-9-1 NMSA 1978] and the service cover all state positions except:

- A. officials elected by popular vote or appointed to fill vacancies to elective offices;
- B. members of boards and commissions and heads of agencies appointed by the governor;

- C. heads of agencies appointed by boards or commissions;
- D. directors of department divisions;
- E. those in educational institutions and in public schools;
- F. those employed by state institutions and by state agencies providing educational programs and who are required to hold valid certificates as certified school instructors as defined in Section 22-1-2 NMSA 1978 issued by the state board of education;
- G. those in the governor's office;
- H. those in the state militia or the commissioned officers of the New Mexico state police division of the department of public safety;
- I. those in the judicial branch of government;
- J. those in the legislative branch of government;
- K. not more than two assistants and one secretary in the office of each official listed in Subsections A, B and C of this section, excluding members of boards and commissions in Subsection B of this section;
- L. those of a professional or scientific nature which are temporary in nature;
- M. those filled by patients or inmates in charitable, penal or correctional institutions;
- N. state employees if the personnel board in its discretion decides that the position is one of policymaking; and
- O. disadvantaged youth under twenty-two years of age regularly enrolled or to be enrolled in a secondary educational institution approved by the state board of education or in an accredited state institution of advanced learning or vocational training and who are to be employed for not more than seven hundred twenty hours during any calendar year:
 - (1) the term "disadvantaged youth" shall be defined for purposes of this exemption by regulation duly promulgated by the board; and
 - (2) the board shall:
 - (a) require that all the criteria of this subsection have been met;
 - (b) establish employment lists for the certification of the highest-standing candidates to the prospective employers; and
 - (c) establish the pay rates for such employees.

History: 1953 Comp., § 5-4-31, enacted by Laws 1961, ch. 240, § 4; 1963, ch. 200, § 2; 1967, ch. 181, § 1; 1969, ch. 126, § 1; 1975, ch. 182, § 1; 1977, ch. 247, § 45; 1979, ch. 202, § 6; 1981, ch. 339, § 5; 1987, ch. 254, § 15; 1989, ch. 204, § 10; 1990, ch. 20, § 1.

ANNOTATION

Due process requirements. — New Mexico has recognized that nonpolicymaking officials are entitled to due process before they may be dismissed, but members of boards and commissions and heads of agencies appointed by the governor are not entitled to the State Personnel Act's notice and hearing requirements preceding dismissal of state employees. *Mitchell v. King*, 537 F.2d 385 (10th Cir. 1976).

Purposes underlying exemptions. — The purposes underlying the exemption of certain classes of employees are not to preclude them from benefits such as vacation and sick leave. 1969 Op. Att'y Gen. No. 69-47.

Meaning of "division". — In determining whether departments are "divisions" for purposes of Personnel Act coverage, it is well to keep in mind that there is nothing magic in the word "division"; whether a subdivision of a governmental agency is termed a unit, department, bureau or something else is not the determining factor. Rather the critical determination is whether the subdivision is a major component within the internal administrative framework of the state agency, with certain policy-making powers vested in the head of the "unit"; if so, the department or unit is a "division" within the meaning of the Personnel Act. 1963-64 Op. Att'y Gen. No. 63-90.

Certain positions exempt. — The following departments, agencies, offices, etc., are exempt from the Personnel Act because they are neither (1) not state positions within the meaning of the act or (2) they are not official state agencies within the meaning of the act: district judges, New Mexico historical

society and probation officers. 1961-62 Op. Att'y Gen. No. 61-28.

Removal of personnel from policy-making positions. — By exempting members of boards and commissions and agency heads from the Personnel Act, under Subsection B, the legislature acknowledges that such policy-making positions are different from other types of employment positions and that such category of persons are not entitled to hearings, provided for by 10-9-13H NMSA 1978, before removal from their positions. *State ex rel. Duran v. Anaya*, 102 N.M. 609, 698 P.2d 882 (1985).

Employing agency's determination of exemption prima facie correct. — When an employing agency employs a person to hold an exempt position and so notifies the personnel department (personnel director), the determination by the employing agency is to be considered as prima facie correct. 1963-64 Op. Att'y Gen. No. 63-105.

Status of classified employees upon transfer to successor department. — If classified personnel of a department are transferred to a new, supplanting department, the personnel retain the same classified status and position that they held in the former department and are thus within the coverage of the Personnel Act, 10-9-1 NMSA 1978 et seq.; if a classified position is to become exempt from the provisions of the Personnel Act, then it must first become vacant. 1983 Op. Att'y Gen. No. 83-3.

Associate museum directors exempt. — The four associate directors of the museum of New Mexico are exempt from the Personnel Act under Subsection C. 1961-62 Op. Att'y Gen. No. 62-19.

Judicial employees are specifically exempt from the Personnel Act. - 1969 Op. Att'y Gen. No. 69-47.

Coverage of insurance department personnel. — All insurance department personnel are covered under the Personnel

Act except those, if any, who have been properly excluded under the provisions of this section. 1964 Op. Att'y Gen. No. 64-121.

Classification of corrections department teachers. — Teachers employed by the department of corrections should

be classified as state employees under the State Personnel Act. 1974 Op. Att'y Gen. No. 74-2.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81A C.J.S. States § 86.

10-9-4.1. Personnel Act; rocky mountain information network employees; exemption from coverage.

A. Notwithstanding the provisions of Section 10-9-4 NMSA 1978, all employees of the rocky mountain information network who commence employment on or after the effective date of this act are exempt from coverage under the Personnel Act [10-9-1 NMSA 1978].

B. Notwithstanding the provisions of Section 10-9-4 NMSA 1978, any employee of the rocky mountain information network who was employed prior to the effective date of this act may elect to become exempt from coverage under the Personnel Act by filing a written election to do so with the director of the rocky mountain information network and the director of the state personnel office. An election is effective upon filing and shall be irrevocable so long as the employee remains employed by the rocky mountain information network.

C. As used in this section, "rocky mountain information network" means that project funded by the United States department of justice, regulated by the provisions of 28 Code of Federal Regulations, Part 23, created as part of the regional information sharing systems program established by the United States department of justice and serving law enforcement agencies in the states of New Mexico, Arizona, Nevada, Colorado, Wyoming, Montana, Idaho and Utah.

History: Laws 1987, ch. 337, § 1.

"Effective date of this act". — The phrase "effective date of this act," referred to in Subsections A and B, means June 19, 1987, the effective date of Laws 1987, ch. 337.

10-9-5. Public officers and public employees; executive branch; annual exempt salaries plan.

A. The department of finance and administration shall prepare, by December 1 of each year, an exempt salaries plan for the governor's approval. The plan shall specify salary ranges for the following public officer and public employee positions of the executive branch of government:

- (1) members of boards and commissions appointed by the governor;
- (2) heads of agencies or departments appointed by the governor;
- (3) heads of agencies or departments appointed by the respective boards and commissions of the agencies;
- (4) directors of department divisions;
- (5) employees in the governor's office;
- (6) positions in the state militia and the commissioned officers of the New Mexico state police division of the department of public safety;
- (7) assistants and secretaries in the offices of each official covered by Paragraphs (2), (3) and (10) of this subsection;
- (8) positions of a professional or scientific nature which are temporary in nature;
- (9) state employees whose positions the personnel board has classified as policy-making positions and exempt employees of elective public officials; and
- (10) secretaries of departments appointed by the governor.

B. Excluded from the provisions of this section are employees of the commission on higher education and employees of state educational institutions named in Article 12, Section 11 of the constitution of New Mexico.

C. The exempt salaries plan for the ensuing fiscal year, as prepared by the department of finance and administration and approved by the governor, shall be published as a part of the executive budget document presented to the legislature at its next regular session following the preparation of the plan.

D. Upon the governor's approval, the plan shall take effect at the beginning of the subsequent fiscal year.

History: 1953 Comp., § 5-4-31.1, enacted by Laws 1978, ch. 96, § 1; 1979, ch. 6, § 1; 1979, ch. 202, § 7; 1987, ch. 254, § 16; 1989, ch. 204, § 11.

Repeals and reenactments. — Laws 1978, ch. 96, § 1, repealed 5-4-31.1, 1953 Comp. (former 10-9-5 NMSA 1978), relating to annual exempt-salaries plan for public officers and

employees in the executive branch, and enacted a new 10-9-5 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity of statutory classifications based on population - governmental employee salary or pension statutes, 96 A.L.R.3d 538. 67 C.J.S. Officers and Public Employees § 226.

10-9-6. Certified school instructors previously employed under the provisions of the Personnel Act.

Certified school instructors who were employed as certified school instructors by state institutions or state agencies under the provisions of the Personnel Act [10-9-1 NMSA 1978] prior to July 1, 1974, may elect to continue to be employed under the Personnel Act. Certified school instructors who elect to continue under the Personnel Act shall file a notice of such election with the personnel director prior to the effective date of this act.

History: 1953 Comp., § 5-4-31.2, enacted by Laws 1975, ch. 182, § 2.

10-9-7. Certain rules changes requiring legislative approval.

The state personnel office shall not spend any of its appropriation for the promulgating or filing of rules, policies or plans which have significant financial impact or which would require significant future appropriations to maintain without prior, specific legislative approval.

History: 1953 Comp., § 5-4-31.3, enacted by Laws 1976, ch. 11, § 1; 1980, ch. 6, § 1; 1984, ch. 7, § 1.

ANNOTATION

1983 rules violative of section. — The current Rules for Labor-Management Relations promulgated by the personnel

board in 1983 were promulgated in violation of this section, since the rules contain numerous provisions that have, or are likely to have, a significant financial impact and since no specific, prior legislative approval was given for the promulgation. 1987 Op. Att'y Gen. No. 87-41.

10-9-8. Personnel board; appointment.

The personnel board is created, and shall be composed of five members appointed by the governor and confirmed by the senate, who shall served staggered terms of five years each with one board member's term expiring each year. No person shall be a member of the board or eligible for appointment to the board who is an employee in the service, holds political office or is an officer of a political organization.

History: 1953 Comp., § 5-4-32, enacted by Laws 1961, ch. 240, § 5; 1980, ch. 47, § 1.

ANNOTATION

Meaning of "political office". — Under the theory advanced by a Kentucky court, any person who is elected by the voters to a public office would be deemed holding a political office within the intent of Laws 1961, ch. 240, §§ 5 and 15 (this section and 10-9-21 NMSA 1978). This would be so even if

the election were conducted along what is commonly known as nonpartisan lines rather than political party lines. The term "political office" applies to every elected public office within the state including, but not limited to state elected positions, county elected positions and municipal elected positions, even if conducted along nonpartisan lines. 1961-62 Op. Att'y Gen. No. 61-53.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 67 C.J.S. Officers and Public Employees §§ 4, 15 et seq.

10-9-9. Board members; pay; meetings.

Each board member shall be paid per diem and mileage according to the Per Diem and Mileage Act [10-8-1 NMSA 1978] when traveling on board business. The board shall meet at the call of the chairman but in the absence of such call, at least once every two months.

History: 1953 Comp., § 5-4-33, enacted by Laws 1961, ch. 240, § 6; 1967, ch. 181, § 2.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 67 C.J.S. Officers and Public Employees §§ 224, 225; 73 C.J.S. Public Administrative Law and Procedure § 19.

10-9-10. Board duties.

The board shall:

- A. promulgate regulations to effectuate the Personnel Act [10-9-1 NMSA 1978];
- B. hear appeals and make recommendations to the employers;
- C. hire, with the approval of the governor, a director experienced in the field of personnel administration;
- D. review budget requests prepared by the director for the operation of the personnel program and make appropriate recommendations thereon;
- E. make investigations, studies and audits necessary to the proper administration of the Personnel Act;
- F. make an annual report to the governor at the end of the fiscal year;
- G. establish and maintain liaison with the general services department; and
- H. represent the public interest in the improvement of personnel administration in the system.

History: 1953 Comp., § 5-4-34, enacted by Laws 1961, ch. 240, § 7; 1963, ch. 200, § 3; 1967, ch. 181, § 3; 1983, ch. 301, § 21.

Cross references. — For Public Records Act, see Chapter 14, Article 3 NMSA 1978.

ANNOTATION

Effect of word "shall". — The word "shall" in this section appears to place a mandatory duty upon the board to promulgate rules and regulations to effectuate the Personnel Act. 1963-64 Op. Att'y Gen. No. 64-22.

Rules adopted by board may not abridge statutory rights and duties. — The board has the statutory authority to adopt rules; however, the rules adopted may not abridge the rights or duties imposed by statute. State ex rel. New Mexico State Hwy. Dep't v. Silva, 98 N.M. 549, 650 P.2d 833 (Ct. App. 1982).

Classification under rule-making authority. — Under the rule-making authority of this section and 10-9-13 NMSA 1978 the state personnel board has a limited and restricted right to classify as confidential certain portions of an individual's personnel file which would not otherwise be made available to the state unless on a confidential or restricted basis. 1963-64 Op. Att'y Gen. No. 64-19.

Board acts in quasi-judicial capacity in hearing appeals.

— In hearing administrative appeals by employees from agency action, as distinguished from its function in adopting rules and creating policy, the state personnel board acts in a quasi-judicial capacity rather than a policy-making function. *Montoya v. Department of Fin. & Admin.*, 98 N.M. 408, 649 P.2d 476 (Ct. App. 1982).

Collective bargaining. — In New Mexico, there is an implied authority to bargain collectively in the public sector as an incident to the express grant of authority under the Personnel Act. *Local 2238 of AFSCME v. Stratton*, 108 N.M. 163, 769 P.2d 76 (1989).

Collective bargaining contracts with governmental employees cannot in any way conflict with, contradict, expand or enlarge the rules of labor-management relations adopted by the state personnel board or any other governmental entity acting in this regard. The same applies to any merit system in place or to be adopted in the future. *Local 2238 of AFSCME v. Stratton*, 108 N.M. 163, 769 P.2d 76 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 67 C.J.S. Officers and Public Employees § 197.

10-9-11. Board and office administratively attached to general services department.

The board and the state personnel office are administratively attached, as defined in the Executive Reorganization Act [9-1-1 NMSA 1978], to the general services department.

History: 1953 Comp., § 5-4-34.1, enacted by Laws 1977, ch. 247, § 47; 1983, ch. 301, § 22.

10-9-12. Director duties.

The director shall:

- A. supervise all administrative and technical personnel activities of the state;
- B. act as secretary to the board;
- C. establish, maintain and publish annually a roster of all employees of the state, showing for each employee his division, title, pay rate and other pertinent data;
- D. make annual reports to the board;
- E. recommend to the board rules he considers necessary or desirable to effectuate the Personnel Act [10-9-1 NMSA 1978]; and
- F. supervise all tests and prepare lists of persons passing them to submit to prospective employers.

History: 1953 Comp., § 5-4-35, enacted by Laws 1961, ch. 240, § 8; 1967, ch. 181, § 4.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 67 C.J.S. Officers and Public Employees § 197.

10-9-13. Rules; adoption; coverage.

Rules promulgated by the board shall be effective when filed as required by law. The rules shall provide, among other things, for:

- A. a classification plan for all positions in the service;
- B. a pay plan for all positions in the service;
- C. competitive entrance and promotion tests to determine the qualifications, fitness and ability of applicants to perform the duties of the position for which they apply. Such rules shall also provide for the awarding to those applicants having a passing grade of two preference points for each year of residency in New Mexico not to exceed a total of ten preference points;
- D. exemption from competitive entrance tests for those professional persons applying for classified positions in the service who possess recognized registration or certification by another state agency;
- E. a period of probation of one year during which a probationer may be discharged or demoted or returned to the eligible list without benefit of hearing;
- F. the establishment of employment lists for the certification of the highest standing candidates to the prospective employers and procedure to be followed in hiring from the lists;
- G. hours of work, holiday and leave;
- H. dismissal or demotion procedure for employees in the service, including presentation of written notice stating specific reasons and time for the employees to reply thereto, in writing, and appeals to the board;
- I. the rejection of applicants who fail to meet reasonable requirements as to age, physical condition, training, experience or moral conduct; and
- J. employment of any apparently qualified applicant for a period of not more than ninety days when an emergency condition exists and there are no applicants available on an appropriate employment list as provided in Subsection F of this section. The applicant, if employed, shall be paid at the same rate as a comparable position covered by the Personnel Act [10-9-1 NMSA 1978].

History: 1953 Comp., § 5-4-36, enacted by Laws 1961, ch. 240, § 9; 1963, ch. 200, § 4; 1967, ch. 181, § 5; 1975, ch. 26, § 1; 1983, ch. 28, § 2.

ANNOTATION

Rules adopted by board may not abridge statutory rights and duties. — The board has the statutory authority to adopt rules; however, the rules adopted may not abridge the rights or duties imposed by statute. State ex rel. New Mexico State Hwy. Dep't v. Silva, 98 N.M. 549, 650 P.2d 833 (Ct. App. 1982).

No valid delegation of authority to promulgate rules. — The words "among other things" at the beginning of this section do not constitute a valid delegation of legislative power, authorizing the personnel board to promulgate rules allowing state employees to bargain collectively with state agencies, since the state constitution commits New Mexico to the doctrine of separation of powers and vests the legislative powers in the legislature. It is fundamental that no one of the three branches can delegate effectively any of the powers which belong to it. 1987 Op. Att'y Gen. No. 87-41.

No presumptive ratification of rules. — Legislative acquiescence in and ratification of the Rules for Labor-Management Relations promulgated by the personnel board should not be presumed because the legislature did not disapprove collective bargaining when it amended this section in 1975 and 10-9-18 NMSA 1978 in 1980. 1987 Op. Att'y Gen. No. 87-41.

Removal of personnel from policy-making positions. — By exempting members of boards and commissions and agency heads from the Personnel Act under 10-9-4B NMSA 1978, the legislature acknowledges that such policy-making positions are different from other types of employment positions and that such category of persons are not entitled to

hearings, provided for by Subsection H of this section, before removal from their positions. State ex rel. Duran v. Anaya, 102 N.M. 609, 698 P.2d 882 (1985).

Collective bargaining contracts with governmental employees cannot in any way conflict with, contradict, expand or enlarge the rules of labor-management relations adopted by the state personnel board or any other governmental entity acting in this regard. The same applies to any merit system in place or to be adopted in the future. Local 2238 of AFSCME v. Stratton, 108 N.M. 163, 769 P.2d 76 (1989).

Requiring physical examination. — The state personnel board has the authority to require a physical examination of all applicants for employment. 1963-64 Op. Att'y Gen. No. 64-22.

Harmonization with other act. — The Personnel Act can be harmonized with the provision in the General Appropriation Act that "insurance department personnel shall have qualifications as established by the superintendent of insurance." 1964 Op. Att'y Gen. No. 64-121.

Granting of overtime pay or time-off. — There is no prohibition against the cattle sanitary board (now livestock board) paying its employees engaged in inspecting meat overtime pay or granting compensatory time-off for the extra hours worked. 1967 Op. Att'y Gen. No. 67-20.

Generally, as to specific work hours. — There is no requirement contained in the New Mexico constitution or statutes that work be done at any specific hours of the day. 1967 Op. Att'y Gen. No. 67-89.

Eight-hour days. — There is no specific requirement, either constitutional or statutory, requiring that employees of the state work an eight-hour day. 1967 Op. Att'y Gen. No. 67-89.

Accrual of annual vacation leave. — Juvenile probation officers and their staff who were transferred from the New Mexico judicial branch to the New Mexico executive branch

pursuant the Youth Authority Act, Laws 1988, ch. 101, § 8, were not permitted to continue to accrue annual vacation leave at judicial branch rates under § 47(C) of the act. The rate of accrual of annual leave was not an "accrued benefit" under the plain meaning and structure of § 47(C), which clearly required transferred juvenile probation officers to accrue annual leave at Personnel Act rates from the time of transfer to the executive branch. *Whitely v. New Mexico State Personnel Bd.*, 115 N.M. 308, 850 P.2d 1011 (1993).

Classification of personnel file as confidential. — Under the rule-making authority of this section and 10-9-10 NMSA 1978, the state personnel board has a limited and restricted right to classify as confidential certain portions of an individual's personnel file which would not otherwise be made available to the state unless on a confidential or restricted basis. 1963-64 Op. Att'y Gen. No. 64-19.

Salary matter of public record. — An employee's salary, kept and published under this section, is a matter of public record under 14-2-1 NMSA 1978. 1968 Op. Att'y Gen. No. 68-110.

Test score and position. — A job applicant's test score and position on an eligibility list under this section, possessed by the state personnel office, is a public record under 14-2-1 NMSA 1978. 1968 Op. Att'y Gen. No. 68-110.

Medical and employment histories. — The medical history and employment history solicited from an applicant's previous employer, under this section, are not public records under 14-2-1 NMSA 1978. 1968 Op. Att'y Gen. No. 68-110.

Generally, as to employment termination and pay. — Terminal leave pay is available to involuntarily terminated employees at the discretion of the appointing authority. Terminal

leave pay is available to voluntarily resigning employees as a matter of right. The only limitations upon the power of the appointing authority to dismiss are that notice must be given in writing to the dismissed employee and an authorized reason for dismissal must be stated therein. The only limitation on the right of the voluntarily resigning employee to terminal pay is the requirement that he must give 14 days' notice to the appointing authority. 1959-60 Op. Att'y Gen. No. 60-213.

Physician dismissal by miners' hospital board. — The miners' hospital board may dismiss a physician in their employment for not abiding by the rules and regulations of the hospital board, but the physician has the right to appeal the dismissal to the personnel board. 1964 Op. Att'y Gen. No. 64-130.

Dismissal of employees. — The miners' hospital board has the power to remove or discharge any employee, but it must exercise this power in accordance with the rules promulgated by the personnel board. 1964 Op. Att'y Gen. No. 64-130.

Right to board hearing. — An employee covered by Personnel Act has a right to a personnel board hearing on his dismissal when the reason given for the dismissal is administrative change and a reduction in personnel. 1961-62 Op. Att'y Gen. No. 62-138.

Law reviews. — For note, "Public Labor Disputes - A Suggested Approach for New Mexico," see 1 N.M. L. Rev. 281 (1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. — What constitutes unfair labor practice under state employee relations act, 9 A.L.R.4th 20.

67 C.J.S. Officers and Public Employees § 197.

10-9-13.1. Legislative finding; purpose of act.

The legislature finds that residents of the state are a valuable resource in state employment because of their dedication and commitment to the state they live in. Therefore, the purpose of this act [10-9-13, 10-9-13.1 NMSA 1978] is to encourage residents to remain in the state rather than moving out of state because of unsatisfactory employment opportunities in New Mexico.

History: Laws 1983, ch. 28, § 1.

10-9-13.2. Veteran's preference.

A. In establishing the list of eligibles for appointment, the board shall provide preference points for veterans honorably discharged from the armed forces of the United States. Veterans with a service-connected disability shall be awarded ten points over and above their regular test scores. Veterans without a service-connected disability shall be awarded five points over and above their regular test scores.

B. The board shall determine the rank on any employment list by adding the points to the veteran's final passing grade on the examination after the veteran has submitted proof of having status as a veteran at the time of application for employment with a state agency. In the case of a veteran having a service-connected disability, the veteran shall provide proof of a service-connected disability in the form of a certification by the federal veterans' administration. A veteran with or without a service-connected disability shall have his name placed on the list in accordance with the numerical rating of other veterans and nonveterans.

History: Laws 1989, ch. 284, § 1.

Cross references. — For act's purpose of encouraging residents to remain in state because of favorable employment opportunities, see 10-9-13.1 NMSA 1978.

For reemployment of person in armed forces, see 28-15-1 NMSA 1978.

Compiler's notes. — Laws 1989, ch. 43, § 1 and Laws 1989, ch. 284, § 1 enacted virtually identical versions of this section. The section is set out as enacted by Laws 1989, ch. 284, § 1. Subsection A is identical in both versions, but Sub-

section B in the Laws 1989, ch. 43, § 1 version read "The board shall determine the rank on any employment list by adding the points to the veteran's final passing grade on the examination after the veteran has submitted proof of having status as a veteran at the time of application for employment with a state agency. In the case of having a service-connected disability, the veteran shall provide proof of a service-connected disability in the form of a certification by the United States veterans' administration. A veteran in both five and ten point categories shall have his name placed on the list in accordance

with the numerical rating of other veterans and nonveterans."
See 12-1-8 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 67 C.J.S. Officers and Public Employers §§ 37 to 39.

10-9-14. Blind not barred from competitive examination; method of testing.

A. No agency or officer of the state or any of its political subdivisions shall prohibit, prevent, disqualify or discriminate against any blind person, otherwise qualified, from registering, taking or competing in a competitive entrance or promotion test for any position for which the blind person makes application.

B. The state personnel board and all political subdivisions of the state which require competitive or promotion tests for any position shall provide and adequate and equal test by an appropriate method for any blind person requesting such a test at the time of submitting his application.

History: 1953 Comp., § 5-4-36.1, enacted by Laws 1967, ch. 71, § 1.

Cross references. — For definition of "agency," see 10-9-3 NMSA 1978.

For Handicapped Employment Act, see 28-10-9 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 67 C.J.S. Officers and Public Employees §§ 15, 16, 60, 61; 81A C.J.S. States § 86.

10-9-15. Duties of state officers and employers.

All officers and employers of the state shall comply with the Personnel Act [10-9-1 NMSA 1978]. All employers shall hire employees only from employment lists of applicants who meet prescribed minimum requirements and have passed the prescribed tests, provided by the director. All officers and employers shall furnish any records or information which the director or the board requests.

History: 1953 Comp., § 5-4-37, enacted by Laws 1961, ch. 240, § 10.

Cross references. — For definition of "employer", see 10-9-3 NMSA 1978.

ANNOTATION

Employees in journeyman occupations must obtain certificate of competency. — The Personnel Act does not exempt state employees in journeyman occupations from obtaining a certificate of competency. 1981 Op. Att'y Gen. No. 81-11.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 67 C.J.S. Officers and Public Employees § 197.

10-9-16. Status of present employees.

All employees of the state holding positions brought into the classified service by the Personnel Act [10-9-1 NMSA 1978] shall be continued in their positions and become regular employees without original examinations, if they have held the position for at least one year immediately prior to the effective date of the Personnel Act. All other employees of the state holding positions brought into the service by the Personnel Act shall be continued in their positions as probationers until they have, not later than one year from the effective date of the Personnel Act, taken and passed a qualifying test prescribed by the director for the position held. An employee who fails to qualify shall be dismissed within thirty days after the establishment of an employment or promotion list for his position. Nothing in the Personnel Act shall preclude the reclassification or reallocation of any position held by an incumbent.

This section shall not apply to employees of the grant-in-aid agencies whose status as employees or probationers shall be recognized under rules to be promulgated by the board.

History: 1953 Comp., § 5-4-38, enacted by Laws 1961, ch. 240, § 11.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 67 C.J.S. Officers and Public Employees §§ 60, 61, 64.

10-9-17. Certification of payroll.

No person shall make or approve payment for personnel services to any person in the service, unless the payroll voucher or account of the pay is certified by the director that the person being paid was employed in accordance with the Personnel Act [10-9-1 NMSA 1978].

History: 1953 Comp., § 5-4-39, enacted by Laws 1961, ch. 240, § 12.

ANNOTATION

Only concern of personnel department (personnel director) under this section is to certify whether the person shown on a payroll voucher is employed in accordance with the Personnel Act, and this would involve such matters as eligibility for the particular covered position at the particular salary shown on the payroll voucher. 1963-64 Op. Att'y Gen. No. 63-105.

Certification authority applies only to positions covered under Personnel Act. 1963-64 Op. Att'y Gen. No. 63-105.

The status and compensation of unclassified (exempt) employees is of no concern to the personnel department (personnel director), as its statutory authority is limited to the "service" defined in Subsection C of 10-9-3 NMSA 1978. 1963-64 Op. Att'y Gen. No. 63-105.

Department of finance and administration corrects computation errors. — If an objection of the personnel office (personnel director) to a payroll voucher goes to errors in computation or something of like nature, it is for the department of

finance and administration to see that such errors are corrected. 1963-64 Op. Att'y Gen. No. 63-105.

Exemption questions determined by attorney general. — The department of finance and administration is to honor a payroll voucher so long as it meets that department's requirements, but if the personnel department is of the opinion that a position is not exempt from coverage under the Personnel Act, a legal question involving statutory interpretation arises, and the matter should be referred to the office of the attorney general for determination. 1963-64 Op. Att'y Gen. No. 63-105.

Employing agency's determination of exemption prima facie correct. — When an employing agency employs a person to hold a position which is exempt from coverage under the Personnel Act and so notifies the personnel department (personnel director), the determination by the employing agency is to be considered as prima facie correct. 1963-64 Op. Att'y Gen. No. 63-105.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 67 C.J.S. Officers and Public Employees § 238; 81A C.J.S. States § 86.

10-9-18. Appeals by employees to the board.

A. An employee who is dismissed, demoted or suspended may, within thirty days after the dismissal, demotion or suspension, appeal to the board. The appealing employee and the agency whose action is reviewed have the right to be heard publicly and to present facts pertinent to the appeal.

B. An applicant denied permission to take an examination or who is disqualified may appeal to the board.

C. The technical rules of evidence shall not apply to appeals to the board.

D. A record shall be made of the hearing, which shall be transcribed if there is an appeal to the district court. Costs of the transcripts, including one copy for the board, shall be paid initially by the agency. The cost of the transcripts may be assessed by the court to the losing party on appeal.

E. The board may designate a hearing officer who may be a member of the board or any qualified state employee to preside over and take evidence at any hearing held pursuant to this section. The hearing officer shall prepare and submit to the board a summary of the evidence taken at the hearing and proposed findings of fact. The board shall render a decision, which shall include findings of fact and conclusions of law.

F. If the board finds that the action taken by the agency was without just cause, the board may modify the disciplinary action or order the agency to reinstate the appealing employee to the employee's former position or to a position of like status and pay. Every consideration shall be given to placing the appealing employee in the same geographical location in which the employee was employed prior to the disciplinary action. The board may recommend that the appealing employee be reinstated by an agency other than the one that disciplined the appealing employee. When the board orders an agency to reinstate an appealing employee, the reinstatement shall be effective within thirty days of the board's order. The board may award back pay as of the date of the dismissal, demotion or suspension or as of the later date as the board may specify.

G. A party aggrieved by the decision of the board made pursuant to this section may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

H. Where the public employer has entered into a collective bargaining agreement pursuant to the Public Employee Bargaining Act [10-7E-1 NMSA 1978] covering the employee, such an employee who is dismissed, demoted or suspended may, within thirty days after the dismissal, demotion or suspension, irrevocably elect to appeal the action through arbitration. An appeal under this subsection shall be conducted in accordance with procedures and requirements as set forth in Subsections A, C and D of this section. The arbitrator shall have all of the powers of the board as set forth in Subsection F of this section. A party aggrieved by the decision of the arbitrator may appeal the decision pursuant to Subsection G of this section. The selection of an arbitrator shall be conducted in accordance with selection procedures set forth in the collective bargaining agreement that covers the employee.

History: 1978 Comp., § 10-9-18, enacted by Laws 1980, ch. 47, § 2; 1998, ch. 55, § 21; 1999, ch. 265, § 21; 2009, ch. 76, § 2.

Repeals and reenactments. — Laws 1980, ch. 47, § 2, repeals former 10-9-18 NMSA 1978, relating to appeals by employees to the personnel board, and enacts the above section.

Cross references. — For appeal of final decisions by agencies to district court, see 39-3-1.1 NMSA 1978.

For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

Compiler's notes. — The reference to the "board" throughout this section apparently means the personnel board. See 10-9-3 NMSA 1978 and notes thereto.

The 1998 amendment, effective September 1, 1998, in Subsection D, substituted "assessed" for "assesed"; rewrote Subsection G and made minor stylistic changes.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection G.

The 2009 amendment, effective June 19, 2009, added Subsection H.

ANNOTATION

Right to hearing to challenge termination. — Federal law, and in general, New Mexico law require that when a state employee is terminated, that employee has a right to a hearing to challenge the termination. *Copelin-Brown v. N.M. State Personnel Office*, 399 F.3d 1248 (10th Cir. 2005)

Board acts in quasi-judicial capacity in hearing appeals. — In hearing administrative appeals by employees from agency action, as distinguished from its function in adopting rules and creating policy, the state personnel board acts in a quasi-judicial capacity rather than a policy-making function. *Montoya v. Department of Fin. & Admin.*, 98 N.M. 408, 649 P.2d 476 (Ct. App. 1982).

Board may modify agency's action. — The board can find there was employee misconduct and can also determine that the agency's action was inappropriate for the misconduct found by the board. The board may then modify the agency's action, and this includes reinstatement of a dismissed employee. *State ex rel. New Mexico State Hwy. Dep't v. Silva*, 98 N.M. 549, 650 P.2d 833 (Ct. App. 1982).

Limitation on authority of board. — The state personnel board is not authorized to adjudicate statutory disability discrimination claims in administrative just-cause termination proceedings. *Martinez v. State Eng'r Office*, 2000-NMCA-074, 129 N.M. 413, 9 P.3d 657, cert. denied, 129 N.M. 385, 9 P.3d 68 (2000).

Reorganization plan approved by board. — A state employee who was terminated when his position was eliminated because of a lawful reorganization of a department did not have a right to appeal the decision to eliminate his position once the proposed layoff plan had been submitted to the board and the board had given its approval to the plan. *Cibas v. New Mexico Energy, Minerals & Natural Resources Dep't*, 120 N.M. 127, 898 P.2d 1265 (Ct. App. 1995).

Agency appeal will stay reinstatement order. — An appeal by the highway department operates as a stay of an employment reinstatement order. *State ex rel. New Mexico State Hwy. Dep't v. Silva*, 98 N.M. 549, 650 P.2d 833 (Ct. App. 1982).

10-9-19. Reduction in force.

Whenever an employee is terminated by an employer in a reduction in force by the employer, the terminated employee shall be rehired by that employer if the same or a comparable position becomes available in an increase of force within six months after the termination.

History: 1953 Comp., § 5-4-40.1, enacted by Laws 1963, ch. 200, § 7.

Board not indispensable party on appeal. — The state personnel board is not an indispensable party to an appeal from a final order making an administrative determination as to the employment status of a state employee. *Montoya v. Department of Fin. & Admin.*, 98 N.M. 408, 649 P.2d 476 (Ct. App. 1982).

Exhaustion of administrative remedies. — Employees, who were discharged by the state department of corrections, could not bypass the administrative procedure after the state personnel board dismissed their appeal, in favor of the pursuit of a breach of contract claim in the district court. *Barreras v. State Corr. Dep't*, 2003-NMCA-027, 133 N.M. 313, 62 P.3d 770, cert. denied, 133 N.M. 413, 63 P.3d 516 (2003).

Review by district court. — In determining whether a decision by the board is supported by substantial evidence in the record as a whole, the district court, on appeal, will review the evidence in the light most favorable to the board's decision. *Jimenez v. Department of Cors.*, 101 N.M. 795, 689 P.2d 1266 (1984).

A reviewing court on appeal must determine whether, on balance, the record as a whole contains substantial evidence to support the hearing officer's finding. *Anaya v. New Mexico State Personnel Bd.*, 107 N.M. 622, 762 P.2d 909 (Ct. App. 1988).

Unless a statute provides otherwise, municipal personal board decisions are reviewable on the whole record for arbitrariness, capriciousness, fraud or lack of substantial evidence. *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

Court of appeal's scope of review in reviewing appeals under this article is the same as that of the district court. *Gallegos v. New Mexico State Cors. Dep't*, 115 N.M. 797, 858 P.2d 1276 (Ct. App. 1992).

Three-day mailing rule. — While Subsection A of this section does provide that a notice of appeal to the state personnel board shall be filed within 30 days of the notice of termination, this language does not prohibit the board from adopting a three-day mailing rule to provide due process. *New Mexico Dep't of Health v. Ulibarri*, 115 N.M. 413, 852 P.2d 686 (Ct. App. 1993).

Dismissals from human services department were in accord with law and supported by substantial evidence, which included the failure to promptly report the alleged sexual abuse of a child to the proper authorities. *Perkins v. Department of Human Servs.*, 106 N.M. 651, 748 P.2d 24 (Ct. App. 1987).

Section does not prevent regular cost assessment. — This section is a specific statute that provides only for the cost of the transcript, it does not prevail over the general statutes and rules governing costs. *State ex rel. N.M. State Hwy. & Transp. Dep't v. Baca*, 116 N.M. 751, 867 P.2d 421 (Ct. App. 1993), rev'd in part on other grounds, 120 N.M. 1, 896 P.2d 1148 (1995).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Rights of state and municipal public employees in grievance proceedings, 46 A.L.R.4th 912.

67 C.J.S. Officers and Public Employees §§ 112, 113, 145 to 185.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 67 C.J.S. Officers and Public Employees § 115.

10-9-20. Oaths; testimony; records; refusal.

The board has the power to administer oaths, subpoena witnesses and compel the production of books and papers pertinent to any investigation or hearing authorized by the Personnel Act [10-9-1 NMSA 1978]. Refusal to testify before the board on matters pertaining to personnel is grounds for dismissal from the service.

History: 1953 Comp., § 5-4-41, enacted by Laws 1961, ch. 240, § 14.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure §§ 76 to 86.

10-9-21. Prohibited acts.

A. No employer shall dismiss an employee for failure or refusal to pay or promise to pay any assessment, subscription or contribution to any political organization or candidate; however, nothing contained in this section shall prevent voluntary contributions to political organizations.

B. No person in the personnel office or employee in the service shall hold political office except for a non-partisan county or municipal office or be an officer of a political organization during his employment. For the purposes of the Personnel Act [10-9-1 NMSA 1978], being a local school board member or an elected board member of any post-secondary educational institution shall not be construed to be holding political office, and being an election official shall not be construed to be either holding political office or being an officer of a political organization. Nothing in the Personnel Act shall deny employees the right to vote as they choose or to express their opinions on political subjects and candidates.

C. Any employee who becomes a candidate for public office shall, upon filing or accepting the nomination and during the campaign, take a leave of absence. This subsection does not apply to those employees of a grant-in-aid agency whose political activities are governed by federal statute.

D. The director shall investigate any written charge by any person that this section has been violated and take whatever steps deemed necessary.

E. No person shall be refused the right of taking an examination, from appointment to a position, from promotion or from holding a position because of political or religious opinions or affiliation or because of race or color.

F. No employee or probationer shall engage in partisan political activity while on duty.

G. With respect to employees of federal grant-in-aid agencies, the applicable personnel standards, regulations and federal laws limiting activities shall apply and shall be set forth in rules promulgated by the board.

History: 1953 Comp., § 5-4-42, enacted by Laws 1961, ch. 240, § 15; 1963, ch. 200, § 6; 1967, ch. 181, § 6; 1983, ch. 81, § 1; 1991, ch. 152, § 1.

The 1991 amendment, effective June 14, 1991, inserted "except for a non-partisan or municipal office" in the first sentence in Subsection B.

ANNOTATION

Constitutionality. — Subsection B does not violate the first amendment guarantee of freedom of speech in requiring that certain state employees not hold public office, nor does it deny equal protection by exempting some state employees from its provisions. State ex rel. Gonzales v. Manzagol, 87 N.M. 230, 531 P.2d 1203 (1975).

Legislative power. — The legislature had the constitutional power under N.M. Const., art. VII, § 2B, to enact this section and to thereby provide, as a qualification or standard for continued employment by the state in a position covered by the State Personnel Act, that the employee not hold "political office." State ex rel. Gonzales v. Manzagol, 87 N.M. 230, 531 P.2d 1203 (1975).

Scope of prohibition in Subsection B. — The words "be an officer of a political organization" are relatively clear. The prohibition (in Subsection B) is without restriction and the legislative intent of these words applies with equal force to the highest and lowest office in a political party or organization. Since there is no restriction, all officers of the party or organization

are included within the prohibition, from the state chairman to membership in the central committee or executive committee on down the line to precinct officers and division officers. 1961-62 Op. Att'y Gen. No. 61-53.

Leave of absence required when running for office. — A state employee may seek election to any county office anywhere in the state if the employee takes a leave of absence from the state job while a candidate and, if elected, the employee resigns from the state job. 1992 Op. Att'y Gen. No. 92-01.

Effect of election to public office. — Under the theory advanced by a Kentucky court, any person who is elected by the voters to a public office would be deemed holding a political office within the intent of Laws 1961, ch. 240, §§ 5 and 15 (10-9-8 NMSA 1978 and this section). This would be so even if the election were conducted along what is commonly known as nonpartisan lines rather than political party lines. The term "political office" applies to every elected public office within the state including, but not limited to state elected positions, county elected positions and municipal elected positions, even if conducted along nonpartisan lines. 1961-62 Op. Att'y Gen. No. 61-53 (rendered prior to 1963 amendment).

Example of political office. — The office of city councilman clearly falls within the definition of a "political office" and petitioner who held such office could properly be discharged from his classified state job under this section. State ex rel. Gonzales v. Manzagol, 87 N.M. 230, 531 P.2d 1203 (1975).

Effect of section on municipal election judges or clerks. — Municipal election judges or clerks are not holders of public

office under the prohibition of the Personnel Act. 1961-62 Op. Att'y Gen. No. 62-37.

Candidate for delegate to constitutional convention. — A candidate for the position of delegate to the constitutional convention, which is both a temporary and occasional position, is not a candidate for "public office" and need not take a leave of absence. 1969 Op. Att'y Gen. No. 69-28.

Effect on the delegate. — The position of delegate to a constitutional convention is not a "political office" within the meaning of Subsection B or C of this section. 1969 Op. Att'y Gen. No. 69-28.

Generally, as to delegates. — There is no fundamental inconsistency between the positions of public employee covered by the State Personnel Act and that of delegate to the constitutional convention. 1969 Op. Att'y Gen. No. 69-28.

County commissioners. — County commissioners may not serve as state employees unless they are from Los Alamos County, currently the only county in the state with nonpartisan offices. County commissioners from Los Alamos may be employed in the state personnel service if the two positions are not incompatible. 1992 Op. Att'y Gen. No. 92-01.

Phrase "while on duty" as used in the Personnel Act means to be actually on the job. 1961-62 Op. Att'y Gen. No. 62-116.

When political activity permissible. — A state employee covered by the Personnel Act may engage in political activity while on annual leave, on week-ends and after working hours during the work week. 1961-62 Op. Att'y Gen. No. 62-116.

Am. Jur. 2d, A.L.R. and C.J.S. references. — What constitutes unfair labor practice under state public employee relations act, 9 A.L.R.4th 20.

Validity, construction, and effect of state statutes restricting political activities of public officers or employees, 51 A.L.R.4th 702.

Prohibiting public employee from running for elective office as violation of employee's federal constitutional rights, 44 A.L.R. Fed. 306.

Dismissal of, or other adverse personnel action relating to, public employee for political patronage reasons as violative of First Amendment, 70 A.L.R. Fed. 371.

67 C.J.S. Officers and Public Employees §§ 60, 90, 107, 128, 130, 152.

10-9-22. Unlawful acts prohibited.

It is unlawful to:

A. make any false statement, certificate, mark or rating with regard to any test, certification or appointment made under the Personnel Act [10-9-1 NMSA 1978];

B. directly or indirectly give, pay, offer, solicit or accept any money or other valuable consideration or secure or furnish any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the service.

History: 1953 Comp., § 5-4-43, enacted by Laws 1961, ch. 240, § 16.

Cross references. — For employer immunity from liability for references on former employees, see 50-12-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 67 C.J.S. Officers and Public Employees §§ 255, 257, 258.

10-9-23. Penalties.

Any person wilfully violating any provision of the Personnel Act [10-9-1 NMSA 1978] or the rules of the board is guilty of a misdemeanor. In addition to the criminal penalties, a person found guilty of a misdemeanor under the Personnel Act is ineligible for appointment to or employment in a position in the service, and forfeits his office or position.

History: 1953 Comp., § 5-4-44, enacted by Laws 1961, ch. 240, § 17.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 67 C.J.S. Officers and Public Employees §§ 22, 135 to 136, 255, 257, 258.

10-9-24. Existing rules.

Existing personnel rules, policies and pay plans for the employees of the state shall govern until new rules, policies and pay plans are established under the Personnel Act [10-9-1 NMSA 1978].

History: 1953 Comp., § 5-4-45, enacted by Laws 1961, ch. 240, § 18.

10-9-25. Federal funds and assistance.

When the provisions of any laws of the United States, or any rule, order, or regulation of any federal agency or authority providing federal funds for use in New Mexico, either directly or indirectly or as a grant-in-aid, to be matched or otherwise, impose as a condition for the receipt of such funds, other or higher personnel standards or different classifications than are provided for by the Personnel Act [10-9-1 NMSA

1978], the board has the authority and is directed to adopt rules and regulations to meet the requirements of such law, rule, order or regulation.

History: 1953 Comp., § 5-4-46, enacted by Laws 1961, ch. 240, § 19.