

**Opinion No. 335****University—Teachers—Officers—Employees—Conventions—Expense, Payment of.**

HELD: Members of the teaching staff of the State University are employees, not officers of the State. Their expenses to conventions of state officers cannot be paid by the State, but such expenses may be paid where such teachers attend conferences necessary for the proper execution of the duties fixed upon them by law.

September 23, 1933.

You ask for an opinion relative to section 443, Revised Codes of Montana, as amended by Chapter 130 of the laws of 1933. This section is in part as follows: "Hereafter no state, county, city or school district officer or employee of the state, or of any county or city, or of any school district, shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers, save and except for attendance upon such convention, meeting or other gatherings as said officer may by virtue of his office be required by law to attend."

Your question is whether or not members of the staffs of the University of Montana and its several units are included within the provisions of this statute. The statute applies to state officers, employees of the state and others. To state the question more particularly, are teachers and members of the staffs of the University of Montana and its several units state officers or employees of the state?

The State University is an agency of the state. (State v. Brannon, 86 Mont. 200 (213).) It is under the control and supervision of the State Board of Education. (Section 11, Article XI of the Constitution.) It is supported by public funds, commonly known as the University millage fund, kept upon de-

posit with the State Treasurer and disbursed as other public funds of the state. (Chapter 114, Laws of 1931.)

The terms "state officer" and "employee of the state" have not been directly construed by our Supreme Court. A policeman is not a state officer. (State ex rel. Quintin v. Edwards, 38 Mont. 250.) A policeman is not an incumbent of an office. (State ex rel. Anderson v. Fousek, 91 Mont. 448.) The auditor of the Railroad Commission is not a civil officer. (State ex rel. Barney v. Hawkins, 79 Mont. 506.)

The term employee has been considered in the case of *In re Klein's estate*, 35 Mont. 185. In the case of *Leymel v. Johnson*, 288 Pac. 858, the Supreme Court of California held a high school superintendent to be an employee and not a public officer. In the case of *Mootz v. Bellyea*, 75 A. L. R. 1347, and a note following on page 1352, are collected cases discussing the questions as to whether a school teacher is an employee or an officer. In these cases it is held that the teacher is either an officer or an employee, and the general rule is adopted that an instructor is an employee and not a state officer.

I would therefore conclude that members of the teaching staff of the State University are employees and not state officers. Their expenses cannot be paid at conventions of state officers. The statute by its terms applies only to meetings of state officers. I am informed that it is necessary for instructors from the various departments of the State University to meet together in conference; that such conferences are necessary for the proper execution of the duties fixed upon them by law. I would not consider such conferences to be conventions or meetings of state officers. These meetings, if necessary, may also be said to be meetings which a person may be required by law to attend.