

**Opinion No. 54-5902**

February 11, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mrs. Beatrice B. Roach Secretary of State Santa Fe, New Mexico

{\*342} This will acknowledge receipt of your letter of January 29, 1954 in which you ask what steps should be taken to compensate the officials who participated in a recount ordered by the State Canvassing Board in which sufficient errors were discovered to change the result of the election in the Second Legislative District.

Section 56-615 of the 1951 Compilation, insofar as is material, provides as follows:

{\*343} ". . . if it shall appear that error or fraud sufficient to change said result has been committed, then the costs and expenses of such recount shall be paid by the state upon warrant issued by the state auditor supported by voucher of the state canvassing board; . . . Said costs shall consist of mileage of the sheriff in serving summons and fees and mileage of election officers, at the same rates allowed witnesses in civil actions, but if the recount shows that error or fraud has been committed by election officers in any precinct or election district they shall not be entitled to such mileage or fees."

The above statute clearly makes the payment of the costs of the recount in this instance the obligation of the State of New Mexico. However, Article 4, Section 30, of the New Mexico Constitution, prohibits payment of money from the public treasury except upon appropriation made by the legislature. A check of the 1953 Session Laws indicates that no appropriation was made for this purpose and therefore at the present time there is no method by which such payment can be made.

It is to be regretted that this matter was not called to the attention of the Legislature during its last session. We suggest that you determine the exact amount required to compensate the sheriff and various election officials for their services, keeping in mind the provisions of the above mentioned section, and request the next Legislature to make a deficiency appropriation to pay these expenses.

By: Walter R. Kegel

Assist. Attorney General