

Opinion No. 54-6032

November 3, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Robert D. Castner State Auditor Santa Fe, New Mexico

{*497} Receipt is acknowledged of your letter dated October 20, 1954 in which you request an opinion from this office as to whether or not the charges against the Extradition of Prisoners' Account for the witnesses in the matter of the requisition and arrest of Gane Quattlebaum, should or should not be honored by your office.

{*498} According to the report itemized in your letter, by one Ivan Read, Deputy Sheriff of Hobbs, New Mexico, in which Mr. Read submitted a total bill of \$ 505.92 for expenses incurred in bringing Gene Quattlebaum to Hobbs, New Mexico from Nashville, North Carolina, among the item that you question in this report is one of \$ 72.00 paid as a witness fee for nine (9) days as compensation, when the deputy who went along was paid per diem of \$ 90.00 for nine (9) days, at the rate of \$ 10.00, and the matron was paid \$ 90.00 at the rate of \$ 10.00 for nine (9) days.

You further state in your letter that you are curious about the authorization of the sum of \$ 3.00 per day for the nine (9) days as compensation for bringing a witness. You also question the fact as to whether or not there are any limitations on the number of witnesses authorized to accompany the agent or guard in such cases, as well as the purpose of having a witness or witnesses.

Section 42-1926, N.M:S.A., 1941 Compilation, reads as follows:

"When the punishment of the crime shall be the confinement of the criminal in the penitentiary, the expenses shall be paid out of the state treasury, on the certificate of the governor and warrant of the auditor; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed."

The above quoted statute specifically and in a mandatory manner provides that the expenses shall be paid out of the State Treasury, on the certificate of the Governor and warrant of the Auditor.

The word "expenses" is defined on page 420, Volume 15A of Words and Phrases, as follows:

"'Expenses' mean the money actually paid out. That which is spent; money expended (expenditures); cost; expenditure, outlay or disbursement of money."

Also at page 468 of the Appropriations Act, New Mexico Session Laws of 1953, is found the following:

"EXTRADITION OF PRISONERS; \$ 26,130.00 \$ 26,130.00.

And at page 478 of the New Mexico Session Laws of 1953, is found the following:

"Out of state travel must be authorized by the Governor in writing before such travel is incurred, such approval being on regular forms prescribed by the State Comptroller. The rate of per diem or expense allowance and method of transportation for out of state travel shall be at the direction of the Governor."

The above quoted language of the Appropriations Act, makes it the duty of the Governor to approve said out of state travel and rate of per diem or expense allowance, and the method of transportation for out of state travel. In this case the Governor approved the out of state travel and all of the expenses itemized in the report of Mr. Read, including the item of \$ 72.00 paid a witness for nine (9) days at the rate of \$ 8.00 per day. The Governor has a wide discretion under this state, and his discretion cannot be questioned when he has approved the expenses as presented to him.

It is therefore the opinion of this office that the charges of Mr. Ivan {*499} Read, Deputy Sheriff of Hobbs, particularly the item of \$ 72.00 at the rate of \$ 8.00 per day for nine (9) days, is a legal expense item when it was approved and authorized by the Governor, and same should be honored by your office.

Trusting that this fully answers your inquiry, I remain

By: Hilario Rubio

Assist. Attorney General