

## **Opinion No. 57-181**

July 24, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,  
Assistant Attorney General

**TO:** Hon. A. W. Marshall, District Judge, Sixth Judicial District Court, Deming, New  
Mexico

### **QUESTIONS**

#### QUESTIONS

May the clerk of the district court be given other or additional pay as clerk of the juvenile court, to be paid out of court funds?

#### CONCLUSION

See opinion.

### **OPINION**

#### ANALYSIS

We hope the above question, as drawn from your inquiry of July 12, includes the information you wish.

Chapter 232, Laws of 1957, Amended § 16-3-28, N.M.S.A., 1953 Comp., provides the salaries that may be paid court clerks in the various counties, or combinations thereof. Maximum salaries are included herein. Inasmuch as the particular court involved is not indicated in your inquiry, this office will have to leave to your perusal the actual salary set for the individual you have in mind.

Section 16-3-41 provides that the various district court clerks shall be ex officio juvenile court clerks, etc., but no mention of compensation therefor is made.

Section 16-3-22 provides for the court fund - its determination, collection and disbursement. While no specific mention of disbursements such as are here contemplated is made, previous opinions from this office have attempted to interpret the court's authority to spend this fund.

Attorney General Opinion No. 4708 issued May 8, 1945, states, in part:

"You, as district judge, are given very wide latitude under § 16-3-14 of the 1941 Compilation in the expenditure of the court fund. It is my opinion that if you deemed it

necessary for the proper administration of your court to pay the clerks of the court a sum in addition to their salary as budgeted, that you could do so out of your court fund."

Attorney General Opinion No. 3383, issued January 6, 1940, states, in part:

"It is my opinion that the Legislature intended to give the court a wide discretion in the use of the fund for any purpose connected with the administration of justice." (Allowing court fund disbursement for district attorney's office rent.)

This office agrees that the court has wide latitude in spending the court fund. However, in the face of the legislative opportunity to compensate the district court clerks for their ex officio juvenile court clerk duties, and its failure so to do, this office is dubious as to the courts empowerment to substitute its discretion for the Legislature's. We think the court may not do so, and over-rule so much of the previous opinions as are to the contrary.

Hence, our opinion that the court fund may not be spent for juvenile court duties conferred by statute when such duties are statutorily uncompensated. Faced with deciding whether the Legislature intended not to compensate, or whether an unintentional omission was made, we must assume, of course, that the failure to compensate was purposeful. This does not apply to additional duties assumed by the court clerk at the courts request, for the proper administration of justice, when such duties are not statutorily conferred - and when such duties are performed, in the court's discretion, provision for payment out of the court fund may be made.