

Opinion No. 57-64

April 1, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Honorable W. T. Scoggin, District Judge, Third Judicial District, Division I, Las Cruces, New Mexico

QUESTIONS

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1. Whether a District Attorney may attend an out of State conference, which is concerned with law enforcement problems, financed out of district court funds, without the approval of the State Comptroller.
2. Whether a Juvenile Judge may attend an out of State conference, which is concerned with law enforcement problems, financed out of district court funds, without the approval of the State Comptroller.
3. Whether a Probation Officer may attend an out of State conference, which is concerned with law enforcement problems, financed out of district court funds without the approval of the State Comptroller.

CONCLUSIONS

1. Yes, subject to Governor's approval.
2. Yes, subject to Governor's approval.
3. Yes subject to Governor's approval.

OPINION

ANALYSIS

We are attaching a copy of Opinion of the Attorney General No. 5851, which answers your question as to district attorneys insofar as the matter of reimbursement of district attorneys for out of state conventions are concerned. It did not, however, hold that the reimbursement may be from the court fund. Nevertheless we feel that the reasoning hereafter set forth will be applicable to district attorneys as well as juvenile court judges, and probation officers. We also feel that authorization by the State Comptroller is not necessary.

In Opinion of the Attorney General No. 3383, dated January 6, 1940, it was stated in one portion of the opinion that the district court fund is under the absolute control of the district court. Further on in this same opinion, however, the absolute discretion vested in the court was qualified by limiting the court's discretion over disbursements from the fund to purposes connected with the administration of justice. We agree with this holding and believe it to be applicable to the three officers involved.

Section 16-3-22, N.M.S.A., 1953 Compilation, reads as follows:

"For the purpose of maintaining the district courts in the several counties of this state, there shall be levied by the county commissioners of each county in every year, a tax not to exceed one mill upon each dollar of taxable property, sufficient to provide a court fund in such amount as may be determined and fixed by the district court and state tax commission as herein provided; that on or before the first day of May of each year the district judge of each judicial district in the state shall make an estimate of revenue required for the ensuing year in each county of his district for court purposes, including salaries and expenses chargeable against the court funds as provided by law and shall certify the same to the state tax commission. The state tax commission shall forthwith determine the amount of revenue required for such purpose and shall certify to the board of county commissioners in each county the estimate for such county, and such estimate, when so made and certified, shall not be altered or changed except upon order of the state tax commission. Said tax shall be collected in the same manner as other taxes are collected and shall be known as the court fund; when collected it shall be turned over to the county treasurer, to be by him disbursed for the payment of the expenses of the district court in his county only as provided by law **or upon a certificate of the clerk county is situated, that an allowance has been made by said court**, and no court shall authorize the issuance of any certificate on any account whatsoever unless there shall be at the time money in the county treasury to meet and pay such certificate, and said clerk shall immediately after the close of any term of court, transmit to said treasurer a certified list of all allowances made by said court at such term, and any such treasurer who shall disburse any of the money provided for in this section except as provided by law or as herein provided shall be deemed guilty of a felony, and upon conviction thereof shall be confined in the state penitentiary not less than two years nor more than ten years." (Emphasis Supplied.)

You will notice that a disbursement may be made from this fund upon a certificate of the clerk of the district court that an allowance therefrom has been made by the court.

We find nothing in other statutes which would in any way limit the above cited opinion of the Attorney General No. 3383. Section 13-8-13 and Section 13-8-15, N.M.S.A., 1953 Compilation, provide that the office expenses of probation officers should be paid from the court fund. We do not feel that it would be reasonable to interpret these two sections as limiting the expenses of probation officers to those expenses actually incurred within their offices. It is only logical to hold that the Legislature realized and contemplated that probation officers would perforce have much traveling to do in the discharge of their official duties. We interpret "office purposes" to mean expenses incurred in the

discharge of their official duties, and in the light of Opinion of the Attorney General No. 3383, hold that an out of state conference connected with law enforcement problems would be a proper expense of a probation officer to be paid out of the court fund.

Inasmuch as district judges are juvenile court judges, Section 13-8-2, N.M.S.A., 1953 Compilation, and 13-8-20, N.M.S.A., 1953 Compilation, 1955 Pocket Supplement, we feel that this same judge has the same power over the court fund whether he acts as a district judge or as a juvenile judge, and that therefor a proper expense of the juvenile judge would be an out of state conference, so long as the same was connected with law enforcement matters, payable out of the court fund.

It is to be borne in mind, however, that out of state travel expenses for public officers and employees must be authorized by the Governor in writing. Section 11-1-9, N.M.S.A., 1953 Compilation, and each of the General Appropriations Acts; See Section 11, Chapter 287, Laws 1955, as example.