

Opinion No. 59-106

August 14, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. Walter R. Kegel District Attorney First Judicial District Santa Fe, New Mexico

{*168} This is in response to your recent request for an opinion on the following questions:

1. Is your office covered under the provisions of §§ 5-4-12 to 5-4-14, inclusive, of the 1953 Compilation?
2. Is there any appropriation available at a state level to provide the necessary matching contributions?
3. Can Court Fund monies be used for this purpose?
4. May your office choose its own group plan and its own company to furnish the desired protection?

The answers to your questions are as follows:

1. Yes.
2. No.
3. Yes, provided the Court approves such expenditures.
4. Yes.

Section 5-4-12, N.M.S.A., 1953 Compilation, provides:

"All state departments and institutions and all political subdivisions of the state of New Mexico are hereby authorized to cooperate in providing group or other forms of insurance for the benefit of eligible employees of the respective departments, institutions and subdivisions; provided that the contributions of the state of New Mexico or any of its departments or the political subdivisions of the state shall not exceed twenty per centum (20%) of the cost of such insurance." (Emphasis supplied).

That your office comes within the meaning and scope of this section is clear. Section 17-1-5, N.M.S.A., 1953 Compilation, provides that your salary, the assistants' salaries and the salaries of other personnel of your office are paid by appropriation out of the state general fund. The office of assistant district attorney has been held to be a civil office in Attorney General's Opinion No. 3866. Also the case of **State ex rel. Ward v.**

Romero, 17 N.M. 88, established that the District Attorney is a state officer and a part of the judicial system of the state. The District Attorney therefore comes within the meaning of § 5-4-12, N.M.S.A., 1953 Compilation.

The entire appropriation for your office is specifically set out in Chapter 288, Laws of 1959. The monies appropriated for District 1, Department I, are earmarked for specific purposes and no money was appropriated for contingencies or miscellaneous purposes. Therefore no presently appropriated money is available from the state general fund for the purpose of paying the twenty per centum of the cost of premiums for your proposed insurance.

The County Court Fund is administered by the Courts of the various districts. It has been held that the office rent of the district attorney may properly be paid out of one or more of the various court funds in the district. (See {*169} Attorney General's Opinions 1939-40, page 130). This opinion further held 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 and that the district attorney is a part of the judicial system of the state. (See also **State ex rel. Ward v. Romero**, supra).

We have been unable to locate any authority for the proposition that you must insure with any one particular company. Indeed, since the statute (§ 5-4-12, supra) specifically states that the eligible employees may select "**group or other forms of insurance**" (emphasis supplied), it is apparent that the legislature intended to leave the selection of the insurer to the eligible individuals since most insurance companies do not write all types of insurance and in order to obtain varied types of coverage it must necessarily follow that different companies must be utilized.

By B. J. Baggett

Assistant Attorney General