

Opinion No. 59-123

August 27, 1959

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

TO: Mr. John Humphrey, Jr., Assistant District Attorney Tenth Judicial District Fort Sumner, New Mexico

{*191} This is in reply to your recent inquiry asking for our opinion on the following question:

Is the third proviso of Chapter 241, Section 1, Laws 1957, prohibiting certain private practice by District Attorneys and their assistants still in effect?

Chapter 241, Sections 1 through 4 amended Sections 13-8-5 and 17-1-3 and repealed Section 17-1-6, N.M.S.A., 1953 Comp. These sections referred to the salaries fixed for District Attorneys, allowances for assistants, and salaries for District Attorneys as Juvenile Court Attorneys.

The third proviso reads as follows:

"And provided further that, effective January 1, 1957, neither a district attorney nor any of his assistants shall represent a party plaintiff or party defendant in any civil action wherein a claim is made for damages growing out of an automobile accident occurring within his judicial district and violation thereof shall be grounds for removal of office."

You state that in your opinion, the 1957 Act was an appropriation act and therefore, the third proviso expired with the Act, not being repeated in the 1959 Session Laws. In my opinion, your conclusion is erroneous. The third proviso, now codified as part of Section 17-1-3, *supra*, is still in effect.

The 1957 Act was not an appropriation act. The Act merely fixed the salaries of the District Attorneys, District Attorneys as Juvenile Court Attorneys and prescribed allowances for assistants. Nowhere in the Act was any appropriation made for payment of these salaries or allowances. The appropriations for the several District Attorneys were made by Chapter 235, Section 1 (at page 532), Laws of 1957. See also Section 17-1-5, *supra*, which provides that the salaries of the District Attorneys, assistants and other personnel in the District Attorney's office are to be paid by appropriations out of the State General Fund. Further evidence to the effect that Chapter 241 in toto was considered as permanent law is that all the sections thereof have been compiled in the statutes. See Sections 17-1-3 and 13-8-5, *supra*, in the pocket supplement to the 1953 Statutes.

Although your specific question has been answered, I should like to point out that two recent opinions from this office have construed the limitations contained in the third

proviso. Opinion No. 57-51 held that neither a District Attorney nor his assistants may handle automobile accident claims even though his appointment is only temporary and even though he has been retained in the case prior to taking office, nor may a firm of which a Special Assistant District Attorney is a regular full time member handle such claims. Opinion No. 57-108 held that the proviso does not prevent the partner of the District Attorney or Assistant District Attorney from participating in or receiving fees from automobile accident cases, provided the partnership arrangement is such that the District Attorney or Assistant District Attorney does not benefit therefrom. A copy of each of these opinions is enclosed.

By: PHILLIP R. ASHBY,

Assistant Attorney General