

Opinion No. 60-97

May 19, 1960

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

TO: Mr. George T. Reynolds District Attorney Eighth Judicial District Taos, New Mexico

QUESTION

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Is the increased salary afforded District Attorneys in their capacity as Juvenile Court Attorneys through Chapter 320 of the Laws of 1959 to come from the general fund in view of the proviso in the appropriations made in Chapter 288 of the Laws of 1959?

CONCLUSION

See analysis.

OPINION

{*464} ANALYSIS

The question considered herein is precipitated by certain language included in the Appropriations Act for the 48th and 49th fiscal years, codified as Chapter 288 of the Laws of 1959. Particularly as related to the Eighth Judicial District, it is to be noted that there was and is appropriated the sum of \$ 24,500.00 for each fiscal year for salaries and retirement with the proviso as follows:

"provided that of this amount the sum of fifteen thousand dollars (\$ 15,000) will be contributed by the court funds of the several counties of the district as provided by Section 2, Chapter 241, Laws of 1957."

Section 2 of the Laws of 1957, provided for a contribution from the court fund in the amount of \$ 13,000.00 for this District. During the past session of the Legislature, § 13-9-5, N.M.S.A., 1953 Compilation, was amended to provide for an increased salary for Juvenile Court Attorneys. This increase for the Eighth Judicial District amounted to the sum of \$ 1,400.00 per annum. That section further provided that the salary "shall be paid out of the state general fund."

Objection has been made that the increase in the amount of \$ 2,000.00 from the court fund, purportedly to cover the increased salary above mentioned, is invalid.

It is our conclusion that the Legislature in making the appropriations for the Eighth Judicial District did appropriate and authorize the expenditure of \$ 24,500.00 for each

fiscal year. However, it is our further conclusion that of this amount only \$ 9,500.00, that is the difference between the amount appropriated and the \$ 15,000.00 required to come from the court fund, is made available from the general fund. It is to be noted that the Appropriation Act in no way specifies that the increased salary for the Juvenile Court Attorney comes from the general fund or from the court fund. In other words, the several line items are in no manner segregated. The Appropriation Act merely makes available the total sum of which \$ 15,000.00 must be made available from the court fund. If such fund is not capable of making the required contribution, then it would appear that the appropriations made available would be short in that amount and appropriate adjustment would have to be made. However, since the salary of the District {**465*} Attorney is set by law, it would appear that the adjustment must be made in the other line items.

A question has been raised that the proviso set forth above is unconstitutional in that it is an effort to amend Section 2 of Chapter 241 of the Laws of 1957. In our opinion, this is not the case. **State ex rel. Whittier v. Safford**, 28 N.M. 531, states as follows:

"The term 'general appropriation bills shall embrace nothing but appropriations,' as used, means that no appropriations other than those specified shall be valid if placed in such general appropriation bill. To sustain appellant's contention would result in holding that nothing but bare appropriations shall be incorporated in such general appropriation bill. This is neither the purpose nor spirit of the constitutional provision under consideration. . . . It is only such matters as are foreign, not related to, nor connected with such subject, that are forbidden. Matters which are germane to and naturally and logically connected with the expenditure of the moneys provided in the bill, being in the nature of detail, may be incorporated therein."

While it is true that this case dealt with a matter setting forth the fashion in which moneys should be expended, we believe that the language of the court is equally applicable here. Furthermore, it becomes obvious in analyzing the appropriation bill that the Legislature intended only \$ 9,500.00 to be appropriated from the general fund for use by the Eighth Judicial District. Therefore, in any event, only one conclusion may be drawn and that is that this amount is the total sum made available by the Legislature from the general fund for use by that District.

By: Thomas O. Olson

Assistant Attorney General