

Opinion No. 61-61

July 17, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Boston E. Witt, First Assistant Attorney General

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

QUESTION

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May district attorneys represent and receive fees in compensation other than the salary provided by law for services rendered to state agencies, departments, boards and commissions such as the State Board of Finance and to Municipalities and Municipal School districts?

CONCLUSION

Yes.

OPINION

ANALYSIS

The duties of the district attorney are set forth in Section 17-1-11, N.M.S.A., 1953 Compilation. In addition to representing the state and counties in courts within his district and representing all county officers, he is charged with the duty of advising all state officers when requested. Does this prohibit them from representing a state agency, etc., regarding for instance a bond issue? We think not. In so concluding we are not unmindful of the case of **Hanagan v. Board of County Commissioners**, 64 N.M. 103, wherein our Supreme Court held that a district attorney could not receive additional compensation for representing in his private capacity a board of county commissioners within his district regarding a bond issue because he was expressly charged with the duty of representing the board as district attorney. The case is, in our opinion, distinguishable. Here there is no affirmative duty on the part of the district attorney to represent a board such as the State Board of Finance. While a district attorney is to advise state officers within his district when requested, we deem this to mean "advise these officers on matters relating to the judicial district in which he is located." This position is made firm when we remember that the Attorney General is the legal representative of all state agencies, departments, etc., including the State Board of Finance. Section 4-3-2, N.M.S.A., 1953 Compilation. The duty to advise state officers found in Section 17-1-11, N.M.S.A., 1953 Compilation (P.S.) is, in our judgment, limited

to those matters relating to and pending in the judicial district in which the district attorney is located - not to matters of statewide application before the board.

There is no question that a district attorney may continue his private practice while holding the office so long as it does not violate the proscription found in Section 17-1-3, N.M.S.A., 1953 Compilation (P.S.).

There is even less question about a district attorney representing a municipality or municipal school district since Section 17-1-11, supra, does not in any manner charge district attorneys with the duty of representing them in their official capacity.