

Opinion No. 62-128

October 15, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Albert Gonzales, Chairman, Board of County Commissioners, La Corte Building, Santa Fe, New Mexico

QUESTION

In presenting your opinion request, you give the following background information. The Board of County Commissioners of Santa Fe county has budgeted five hundred dollars for this fiscal year for the payment of stenographic fees in connection with preliminary hearings in justice of the peace courts. In the past, the budgeted figure has sometimes been exceeded and for this reason you pose the following question:

Does a Board of County Commissioners have the right to limit, by budgetary provisions, the amount to be spent on stenographic fees for preliminary hearings in justice of the peace courts?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 41-3-10, N.M.S.A., 1953 Compilation, provides that in all preliminary examinations before justices of the peace on felony charges, when "in the discretion and judgment of the district attorney of said county it is deemed advisable for the perpetuation and preservation of testimony to be submitted to the grand jury of said county of said charge, the said district attorney is hereby authorized and empowered to employ an efficient and competent stenographer, whose duties shall be to take down the evidence and reduce the same to writing . . ."

We see then that the district attorney is authorized to use his own judgment and discretion in the matter of hiring a stenographer to take down the proceedings in preliminary hearings before justices of the peace.

As to payment for such stenographers' services, Section 41-3-11, N.M.S.A., 1953 Compilation, provides that if the necessary procedural steps are followed payment is to be made out of the county funds "as other claims against counties allowed by the board of county commissioners are paid."

Section 11-2-57, N.M.S.A., 1953 Compilation (P.S.) requires local public bodies, which includes counties, to file a proposed budget with the local government division of the Department of Finance and Administration.

Section 11-2-61, N.M.S.A., 1953 Compilation (P.S.) provides that:

"When any budget for a local public body shall have been approved and received by a local public body, it shall be binding upon all officials and governing authorities, and no governing authority or official shall allow or approve claims in excess thereof, and no official shall pay any warrant in excess thereof, and such allowances or claims or warrants so allowed or paid shall be a liability against the officials so allowing or paying such claims or warrants, and recovery for such excess amounts so allowed or paid may be had against the bondsmen of such officials."

Under the provisions of Section 11-2-57 (G) supra, the Director of the Department of Finance and Administration may authorize "the transfer of funds from one budget item to another **when such transfer is requested and an emergency condition exists** meriting such transfer and such transfer is not prohibited by law." (Emphasis added)

There is another procedure provided in Section 11-2-57 (h), supra, which permits the approved budget to be increased upon approval of the Director of the Department of Finance and Administration and the Attorney General if the local public body has surplus funds on hand not necessary to meet the expenditures provided for in the budget.

Based upon the various statutory provisions dealing with public finances, it is clear that the over-all authority in connection therewith rests with the local governing body in conjunction with the Department of Finance and Administration.