

## **Opinion No. 62-134**

October 24, 1962

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

**TO:** Mr. Norman Hodges, District Attorney, Sixth Judicial District, P.O. Box 1025, Silver City, New Mexico

### **QUESTION**

#### QUESTIONS

1. Under Section 17-1-3, who has the power to exercise the option of paying either actual expenses or \$ 8.00 a day per diem to district attorneys and their staffs for travel expenses?
2. As used in Section 17-1-3, what is the "official duty station" of a district attorney?

#### CONCLUSIONS

1. The District Court.
2. The place where he resides and maintains his office.

### **OPINION**

#### ANALYSIS

A question has arisen as to the proper interpretation of Section 17-1-3 (A), N.M.S.A., 1953 Compilation (P.S.). This Section, which deals with reimbursement of district attorneys and their staffs for travel expenses, provides as follows:

"The actual traveling expenses, by common carrier or personnel automobile, shall be paid for on the basis of transportation costs by common carrier and at the rate of nine cents (\$.09) per mile for travel by personally owned vehicles, and subsistence in lieu of actual expenses shall be paid to the district attorneys and other personnel at the rate of eight dollars (\$ 8.00) per diem, or actual expenses, while in the discharge of their duties, provided that per diem in lieu of subsistence shall not be allowed while such district attorneys and their assistants and other personnel are performing duties within a radius of twenty miles of their respective official duty stations. Such expenses incurred while in the discharge of their duties shall be paid by the counties in behalf of which the same are incurred, out of the court fund of each county when supported by sworn statements of such expenses, and approved by order of the court."

This provision is somewhat vague in that the terms "subsistence" and "per diem" are, at one point, used synonymously, while at another point the statute provides for "per diem in lieu of subsistence."

In any event, however, there is an optional method of reimbursement when the district attorney and/or his staff have performed duties more than twenty miles from their "official duty station."

This gives rise to the following two questions. What is a district attorney's "official duty station?" Who has the power to exercise the option as to the method of reimbursement for expenses?

Section 17-1-3, supra, places restrictions on eight of the district attorneys as to the location where their assistants must reside and maintain an office. For example, in the Fifth Judicial District one of the assistant district attorneys must reside and maintain his office in Lea County. Therefore, we are of the opinion that the district attorney's official duty station is the city wherein he resides and maintains his office. Likewise, the official duty station of an assistant district attorney is the city wherein he resides and maintains his office.

Since this Section provides an optional method of reimbursement for expenses when the district attorney or one of his staff has performed duties at a location more than twenty miles from his official duty station, we must determine who has the power to exercise this option.

It is to be noted that whether actual expenses or per diem is allowed, the money is to be paid out of the court fund when "approved by order of the court."

Section 16-3-22, N.M.S.A., 1953 Compilation, provides that money is to be paid out of the court fund only "when an allowance has been made by said court."

As this office stated in Opinion No. 4708 (1945), this Section grants District Courts very wide latitude in the disbursement of moneys from the court fund. For this reason, we are of the opinion that when the prerequisite conditions for exercise of the option to pay either actual expenses or per diem have been met, it is the District Court which has the power and authority to exercise the option.