

Opinion No. 62-55

April 3, 1962

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

TO: Mr. Clay Buchanan, Director, New Mexico Legislative Council, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Is it legal for a county or municipality to cause to be issued reimbursement vouchers for the travel expenses of an officer or employee thereof prior to completion of the trip for which reimbursement is made?
2. Is it legal for school districts to cause to be issued reimbursement vouchers for the travel expenses of an officer or employee thereof prior to completion of the trip for which reimbursement is made?
3. Is it required that counties, municipalities and school districts show on the voucher the purpose for which the trip was made and the itinerary?
4. If the practice mentioned in questions 1 and 2 is not legal, what section of the law would be violated and what section of the law prescribes the penalty for a violation?

CONCLUSIONS

1. No.
2. No.
3. Yes.
4. See analysis.

OPINION

ANALYSIS

The answer to your first question, which relates to counties and municipalities, is to be found in Section 11 - 1 - 9, N.M.S.A., 1953 Compilation. This Section prescribes the statutory requirements relating to, and the limitations on, travel and expenses to be received by officers or employees of the state, state institutions, penal, reformatory,

educational and charitable, the counties of the state, or of incorporated cities, towns or villages, or of municipal, consolidated, union or rural school districts. Incorporated therein is a proviso that:

"No officer or employee of any state or county office, bureau, board or commission, or any state or county institution, or of any of the incorporated cities, towns or villages of the state shall advance to himself or to any other official or employee any public funds for travel expense, whether within or without the state, prior to the actual time such travel is performed, **but shall only receive payment therefor after such travel shall have been performed**, and only then when vouchers are presented, with receipt attached, and duly signed and sworn to, as in this act provided." (Emphasis supplied)

Accordingly, the answer to your first question is that counties and municipalities cannot reimburse officers and employees for travel expenses until **after** the actual travel has been performed. And in partial answer to your fourth question, Section 11-1-9, supra, is one of the statutes which is violated if such pre-travel "reimbursement" is made.

In regard to your second question, which is the same as question 1 except that it is limited to school districts, it will be noted that while school districts are expressly mentioned in the general travel and per diem portion of Section 11-1-9, supra, they are not specifically mentioned in the proviso against pre-payment of travel expenses -- whether intentionally or inadvertently omitted we do not need to determine inasmuch as there are other statutory enactments which provide an answer to your question.

In order to receive permissible travel costs and per diem allowance all public employees must execute a voucher therefor. Opinion No. 61-5. A public voucher is defined in Section 11-2-72, N.M.S.A., 1953 Compilation (P.S.) as follows:

"Public voucher' means a written instrument used by any state agency or local public body, including **public schools**, for the purpose of **proving the validity of a claim** for the expenditure of public money." (Emphasis supplied)

Section 11-2-70, N.M.S.A., 1953 Compilation (P.S.) provides in pertinent part as follows:

"All vouchers used by state agencies or local public bodies, **including public schools**, shall be in the form and contain the information designated by the director of the department of finance and administration. All payments of moneys to any claimant for **moneys due** for purchases or for services rendered and properly chargeable against and due from public funds shall be made on vouchers as so formulated and prescribed. Such vouchers shall be designed so as to clearly show the items purchased or the services rendered . . . in case reimbursement is claimed by any public official or employee the voucher pertaining thereto must have receipts attached thereto for all money claimed." (Emphasis supplied).

We are advised that the voucher form used by the public schools for travel expense reimbursement contains a sworn statement by the employee that "the services have been rendered". While this particular form does not adapt itself readily for use as a voucher for reimbursement of travel expenses and per diem allowance, nonetheless the intent is obviously to preclude pre-payment of such expenses. Since the particular form which is used (and it is actually a goods and services purchase voucher) states that the services have been rendered, it must contemplate that the travel expenses have **already** been incurred.

The form used by State agencies is designated "Reimbursement Voucher" and contains a statement that it is for "travel and other expenses including per diem," and the Department Head or his representative must certify that the "expenses **have been incurred.**"

While the provisions of Section 40-8-12, N.M.S.A., 1953 Compilation, are probably not broad enough to cover travel expenses and per diem allowances, they indicate quite clearly a strong public policy of requiring rendition of services prior to any payment therefor or in connection therewith. This Section provides as follows:

"Except in the case of payments covering lawful vacation periods and absences from employment because of sickness, any person who receives payment, or any person who makes payment or causes payment to be made from public money where such payment purports to be for wages, salary, or other return for personal services **and where such services have not in fact been rendered**, shall be guilty of a felony" (Emphasis supplied).

It is obvious that if travel expenses and per diem allowances were paid to the employee in advance of the travel, it might well happen that the political subdivision or school district would never receive any value for its money. Death of the employee-payee is only one of the many ways in which the public money might be paid out and yet the proposed official trip never taken and the proposed work never accomplished.

In answer to your third question, Sections 11-2-70 and 11-2-72, N.M.S.A., 1953 Compilation (P.S.) clearly contemplate that all reimbursement vouchers for public employees will show the purpose for which the trip was made as well as the itinerary. The voucher form used by State agencies contains a section denominated itinerary and contains thereunder a place to enter the date, the nature of the official business, the firm or party contacted and his address. In addition, another section of the form contains a place for entering time of departure and arrival to the points of travel. While the purchase voucher form used by the public schools in lieu of the actual reimbursement voucher contains no specific sections asking for such information (since it was not designed for use as a reimbursement voucher), it is only too obvious that the same information must be included thereon when used as a reimbursement voucher. Sections 11-2-70 and 11-2-72, supra.

Your fourth question, asking the legal penalty prescribed for advancement of travel costs and expense money prior to travel, cannot be answered in a definitive manner absent a specific fact situation. It is, of course, a felony for any person to knowingly make, cause to be made, or permit to be made a false material statement upon **any** public voucher. Section 11-2-74, N.M.S.A., 1953 Compilation (P.S.). Also, Article VIII, Section 4 of the New Mexico Constitution makes it a felony for any public officer to use public moneys for any purpose not authorized by law.

In the absence of any established intentional violations, it would seem that the best method of proceeding would be for the various departments of government to fully apprise the proper local authorities that advance travel and expense payments are **not** to be made. We would also suggest that pursuant to the authority vested in the Department of Finance and Administration under Section 11-2-70, supra, a rule be adopted requiring all local public bodies, including the public schools, to use a reimbursement voucher for travel and other expenses which specifically requires the same information as that used by State agencies.