

Opinion No. 63-76

July 10, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Patrick F. Hanagan District Attorney Fifth Judicial District Roswell, New Mexico

QUESTION

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1. What law enforcement officers are included in the phrase "full-time salaried county or state law enforcement officer" in Section 36-19-18, N.M.S.A., 1953 Compilation, as amended by laws of 1963, Ch. 300, Sec. 15, for the purposes of payment of court costs by the director of the administrative office of the courts to Justices of the Peace who docket criminal cases?
2. Should the administrative officer of the courts pay the fee allowed by law to any justice of the peace who docket a criminal case upon the complaint of any law enforcement officer whether or not a full-time salaried county or state law enforcement officer provided the complaint is approved by the district attorney?

CONCLUSIONS

1. See analysis.
2. See analysis.

OPINION

{*157} ANALYSIS

Section 36-19-18, N.M.S.A., 1953 Compilation, as amended, Laws of 1963, Ch. 300, Section 15, provides as follows:

"Court Costs -- Recovery from defendant found guilty. -- The director of the administrative office of the courts shall pay the fee allowed by law to any justice of the peace **who docket a criminal case upon the complaint of a full-time salaried county or state law enforcement officer.** .." (emphasis supplied).

The first question presented requires an interpretation of the meaning of the phrase "full-time salaried county or state law enforcement officer".

The term "full-time" has been defined differently by various courts depending on the context in which it has been found. In the context of employment, it has been defined as

"a full working day for six days every week of the year" for the purposes of Workman's Compensation. (**Black Mountain Corporation v. Adkins**, 289 Ky. 617, 133 S.W. 2d. 900). "Full-time employment" has been more generally defined as the customary period of work in terms of hours per day or days per week within a given community. (**Cote v. Bachelder-Worchester Co.**, 85 N.H. 444, 160 A. 101). "Full-time employment" does not require 24 hours a day, but it does require that the employee make that employment his business to the exclusion of the conduct of other business. (**Johnson v. Stoughton Wagon Co.**, 118 Wis. 438, 95 N.W. 394).

The word "salary" is defined as "fixed compensation regularly paid, or stipulated to be paid, for services, as by the year, quarter, month, or week". (Webster's New Collegiate Dictionary, 2nd. Edition, 1959). The term has been generally defined as a fixed annual or periodical payment for services, depending on the time, and not on the amount of the services rendered. (**Spalding v. Thronberry**, 128 Ky. 533, 108 S.W. 906). This term should be distinguished from the term "fee". The word "salary" imports a specific contract for a specific sum for a specified period of time, while "fees" are compensation for particular acts. (**Blick v. Merchantile Trust & Deposit Co.** 113 Md. 487, 77 A. 844). "Salaried" is defined as "receiving or yielding a salary". (Webster's New Collegiate Dictionary, 2nd. Edition, 1959).

When the above definitions of "full-time" and "salaried" are combined, a definition of a "full-time salaried law enforcement officer" may be derived. It is the opinion of this office that in order for a law enforcement officer to be a "full-time salaried law enforcement officer" within the meaning of Section 36-19-18, N.M.S.A., 1953 Compilation, as amended, Laws of 1963, his employment must be such that he is required to be on the job during the normal working day, that the employment occupies his time to the exclusion of the conduct of other business, and that the law enforcement officer be paid a regular, fixed, periodical sum for services rendered as a law enforcement officer.

The statute in question further requires that the law enforcement officer be a "county or state law enforcement officer." This additional limitation on the complainants set out by the statute for remuneration by the administrative officer of the courts requires a judgment on the extent to which the definition of {**158*} "full-time salaried law enforcement officer" given above is modified by the words "county or state" added before "law enforcement officer". In order to determine the effect of these modifying words, it is necessary to consider the purpose for which the requirement that the complainant be a "full-time salaried county or state law enforcement officer" was added to the laws of New Mexico. At least one reason for placing such requirements on the complainant in order for the administrative officer of the courts to remunerate the justice of the peace who docketts the criminal case was to establish some degree of control over the signing of criminal complaints. It may be readily seen that with the enactment of the new criminal code, and with the establishment of false arrest as a fourth degree felony, some control needed to be inserted in the laws of New Mexico to insure that those signing complaints were familiar with the laws, violations of which they were complaining. Since it is assumed that law enforcement officers are familiar with the laws they enforce, and since full-time law enforcement officers who are salaried as such are

the most versed in working with the criminal laws, they are the logical persons to determine whether a factual situation warrants a criminal complaint. Since the law enforcement officers are to enforce state law, it follows that they should be state or county law enforcement officers. This does not mean, however, that a full-time law enforcement officer who deals with nothing but state law is any more versed in the general field of criminal law enforcement than some other full-time law enforcement officer, e.g., a municipal or federal law enforcement officer. It would thus appear that the additional requirement that the full-time salaried law enforcement officer be also a county or state law enforcement officer was inserted by the legislature to insure that the law enforcement officers who complained of violations of the state criminal law were knowledgeable of that law. This requirement can be satisfied by any full-time salaried law enforcement officer who is also a county or state law enforcement officer, such as a state policeman, county sheriff or full-time deputy sheriff, since it is assumed that any person who is made a county or state law enforcement officer by the executive branch of the state government is qualified for the position. It is thus the opinion of this office that the requirements of a "full-time salaried county or state law enforcement officer" in Section 36-19-18, supra, are met by any full-time salaried law enforcement officer who is also a county or state law enforcement officer.

A determination of who pays the salary of the full-time law enforcement officer is not conclusive of his right to be a complainant under Section 36-19-18, supra, so long as he is paid for full-time employment as a law enforcement officer. Neither is the fact that a part of the officer's duties are not concerned strictly with "enforcing the law", e.g., a policeman may be required to aid at the scene of an accident, or direct traffic, or a conservation officer, required by law to enforce hunting and fishing regulations, may also have other duties to perform. The test is whether these persons are required to be on the job during the normal working day, and whether the job of enforcing the law occupies their time to the exclusion of the conduct of other business. (See **Harlan v. Washington National Ins. Co.**, 130 A.2d 140, 338 Pa. 88).

Thus, it is evident that a full-time salaried law enforcement officer, {^{*159}} within the definition given, who is also a county or state law enforcement officer, whether he be a federal fish and wildlife employee having a duty to enforce federal law and is deputized as a state conservation officer, or a deputized municipal law enforcement officer, a state policeman, a county sheriff or his full-time deputy or any other such officer, can become a complainant, and the administrative officer of the courts is authorized by law to reimburse any justice of the peace who docket such criminal complaint and does not obtain the filing fee from the defendant if found guilty.

This opinion is not to be taken as holding that signing of a criminal complaint by anyone other than a "full-time salaried county or state law enforcement officer" is prohibited by law. Such is not the case. It does mean, however, that the administrative officer of the courts has no authority to remunerate justices of the peace who docket criminal cases wherein the complainant is someone other than those people authorized by the legislature. As to the duty of the justices of the peace to docket criminal cases wherein the complainant does not come within the statute, and does not have funds to pay the

docket fee, reference is made to Attorney General's Opinion No. 61-83. That opinion quoted from the case of **State v. Dobler**, 53 Wyo. 252, 81 P.2d 300, which held:

"Where there is no statutory provision fixing the time when the fees of an officer are due and demandable but it clearly appears that it was the intention of the lawmakers that he should receive a reasonable fee, he may charge reasonable fees and may demand their payment in advance before rendering his services."

In answer to the second question, it should be noted that Section 36-19-18, supra, requires that the "complainant" be a full-time salaried county or state law enforcement officer. Since it is clear that the District Attorney and his assistants come within the definition of "full-time salaried law enforcement officers" given above, a criminal case docketed on their complaint meets the requirements of the statutory section under discussion. The difficulty arises where the actual complainant is not a "full-time salaried county or state law enforcement officer" but the complaint is approved by the District Attorney. Since the statute specifically requires that the **complainant** meet the requirements of a full-time salaried county or state law enforcement officer, it is the opinion of this office that the administrator of the courts is authorized to pay the fee allowed by law to the justice of the peace only where the district attorney comes within the meaning of "complainant" as used in the statute. It is a further requirement that the District Attorney become a complainant **before** the justice of the peace docketed the criminal case. Thus, the district attorney cannot merely approve the complaint for purposes of payment by the administrator of the courts; he must actually be a complainant.

By: James E. Snead

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