

Opinion No. 64-59

May 5, 1964

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

TO: Mr. Kenneth S. Barnhill, Chief Probation Officer, Third Judicial District, County Court House, Las Cruces, New Mexico

QUESTION

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1. When district judges and their court personnel are reimbursed for actual and necessary travel and subsistence expenses, is it necessary that approval be obtained from the Department of Finance and Administration?
2. When public officers and employees have been authorized to use actual and necessary expenses in lieu of standard per diem rates, are these officials limited to a maximum of ten dollars per day?

CONCLUSIONS

1. Yes, but such approval is a ministerial function.
2. No.

OPINION

ANALYSIS

In 1953 the office of the Attorney General was asked by the then State Comptroller whether district judges in making allowances to employees for travel, lodging and subsistence from the district court fund would be governed by the amount prescribed by the State Board of Finance, or whether they would be governed by other statutes, among them Section 16-3-33, N.M.S.A., 1953 Compilation. Opinion No. 5830 (1953).

This section provides as follows:

"The district judges shall be reimbursed their actual and necessary traveling expenses, hotel bills and other necessary incidental expenses, incurred while absent from their district headquarters upon official business, such expenses to be paid from the court fund of the county for which such business is transacted, upon itemized expense accounts filed with the clerk of the court for such county."

There is a similar provision governing court personnel. Section 16-3-47, N.M.S.A., 1953 Compilation.

In two recent opinions this office concluded that the above-quoted statute was not repealed by either Chapter 115, Laws 1963, or Chapter 287, Laws 1963. Opinion Nos. 63-96 and 63-111. However, the former Chapter, compiled as Section 11-1-9, does impose an additional requirement on public officers and employees who are allowed actual expenses for transportation, lodging and subsistence. Paragraph C of this Section provides that such actual expenses may be allowed "upon approval of the department of finance and administration." In the case of public officers and employees who are statutorily authorized to be reimbursed for their actual and necessary expenses, the approval by the department of finance and administration is simply a ministerial function which involves only an examination of the sworn voucher with any necessary receipts attached. Section 11-1-9 (D), *supra*.

Your second question asks whether public officers and employees who by statute are authorized to use actual expenses in lieu of the standard per diem rate are limited to a maximum reimbursement of ten dollars per day when actual and necessary expenses are used. The answer is clearly no. Actual and necessary expenses mean just that and they might well exceed ten dollars per day. Had the legislature intended to impose an across-the-board maximum of ten dollars per day it would not have granted certain public officers and employees the authority to use actual and necessary expenses in lieu of standard per diem rates.