

## Opinion No. 65-211

October 25, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

**TO:** Honorable W. T. Scoggins, District Judge, Third Judicial District, County Court House, Las Cruces, New Mexico

### QUESTION

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1. Does the presiding judge of the Third Judicial District have complete control and charge of the facilities that are used by the court, to wit: the courtroom, chambers, jury rooms, library, quarters for the reporters, district attorneys and the district clerks and the personal property used therein?
2. Does the presiding judge of the Third Judicial District have the power to appoint bailiffs?

#### CONCLUSIONS

1. No, see analysis.
2. Yes.

### OPINION

#### {\*343} ANALYSIS

We have taken the liberty of {\*344} rephrasing your first question for the sake of clarification.

In order to determine the power of the presiding judge of the Third Judicial District it is necessary to examine those sections of the statute pertaining to District Judges of the Third Judicial District, Sections 16-3-6.1, through 16-3-6.4, N.M.S.A., 1953 Compilation (P.S.), in relation to those sections of the statutes which establish the powers of the board of county commissioners, specifically Section 15-37-12 and Section 15-37-16 N.M.S.A., 1953 Compilation.

Section 16-3.6.1, N.M.S.A., 1953 Compilation (P.S.), in so far as it is applicable provides as follows:

". . . and aside from the identification of the offices held by each of said district judges there shall be no division or separation of the work of the district clerk's office nor in the process, pleadings, papers of the court, all of which **shall be kept, made and treated as one (1) court with two judges thereof, each of whom shall have all of the power, jurisdiction and authority of a district judge of the state of New Mexico, and a judge of the juvenile court, except in the matter of naming the employees of said district court and in the appointment of persons to positions hereinafter named.**" (Emphasis added).

Section 16-3-6.3, N.M.S.A., 1953 Compilation P.S.) provides:

"Senior or presiding judge -- Duties. -- The judge of the third district with the longest continuous tenure of office as such shall be the senior or presiding judge of said district; Provided, however, that if the tenures of office of both judges are equal, the judge of division 1 shall be the senior or presiding judge. Such senior or presiding judge shall have the power and duty to assign between himself and the other judge the judicial work of said district, and shall appoint the clerks of the district court, and all employees and servants thereof, the county boards of education, probation officers, juvenile court employees, and shall fill vacancies in such positions; Provided, however, that the district judge of each division shall appoint the secretary-reporter and interpreter appurtenant to his division."

Section 16-3-6.4, N.M.S.A., 1953 Compilation (P.S.) provides:

"Process of the court -- -- Expenditures. -- The process of the court in the third judicial district shall be under the teste of the presiding judge of said court as herein provided. Each judge shall have equal authority to incur expenditures, but all of which expenditures shall be approved by the presiding judge from the public funds of the court."

As can be seen, the above sections enumerate those powers which are granted to the presiding judge of your district. These powers do not include control over the facilities used by the court. It seems quite clear that if other powers were granted to that position the legislature would have enumerated them.

The property involved herein is purchased. From funds acquired pursuant to Section 15-3-22, N.M.S.A., 1953 Compilation. That section provides that county commissioners shall levy taxes not to exceed one mill per dollar of taxable property for the court fund. All taxes collected pursuant to this section are then turned over the county treasurer, to be disbursed by him for the payment of district court expenses in his county. From this section it is apparent that county funds are involved and the property acquired thereby is county property.

{\*345} Section 15-37-12, N.M.S.A., 1953 Compilation provides:

"Powers -- Property belonging to county. -- The board of county commissioners shall have power at any session to make such orders concerning the property belonging to the county as they may deem expedient."

Section 15-37-16, N.M.S.A., 1953 Compilation provides:

"Management in general. -- To represent the county and have the care of the county property and the management of the interest of the county in all cases where no other provision is made by law."

The property involved being county property is subject to the management and care of the county commissioners. As there is no grant of authority to others to have complete control over these facilities such control must remain with those persons.

As a practical matter these facilities are kept and maintained for the use and benefit of the court which in this instance consists of two district judges. As such they should and must be made available to each of the judges for their use in the performance of their duties.

In reply to your second question reference should be made to Section 16-3-6.3, N.M.S.A., 1953 Compilation (P.S.), and Section 16-3-43, N.M.S.A., 1953 Compilation (P.S.). It is our opinion that in order for these sections to be given reasonable meaning, the power to appoint a bailiff, who is clearly an employee or servant of the court as defined in Section 16-3-6.3, supra, lies with the presiding judge. The sheriff is then authorized to deputize those persons designated by the presiding judge, but not more than four, to act as officers during the term of court at a rate of pay to be set by the court.

It is hoped that the discussion herein fully answers your questions.