

Opinion No. 66-14

January 31, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

TO: Honorable Garnett R. Burks, District Judge, Seventh Judicial District, County Court House, Socorro, New Mexico

QUESTION

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A psychiatrist has had to travel from Albuquerque to Truth or Consequences to testify as an expert witness about the sanity of an indigent defendant charged with rape and kidnapping. Section 20-1-4, N.M.S.A., 1953 Compilation provides that the total expert witness fees which may be allowed by the Court to a prevailing party shall not exceed one hundred fifty dollars (\$ 150.00). Does this statute apply to the amount which may be paid from the District Court fund for a psychiatrist on behalf of an indigent defendant?

CONCLUSION

No.

OPINION

{*18} ANALYSIS

It is our opinion that Section 20-1-4, N.M.S.A., 1953 Compilation does not place a restriction on the district court fund. Through a long line of opinions by this Office beginning with Attorney General Opinion No. 3383, dated January 6, 1940, we have been of the opinion and followed the rule that a district court has a wide discretion in the use of its district court fund and that the court may use this fund for any purpose connected with the administration of justice. As noted in Attorney General Opinion No. 3383, the court fund is under the absolute control of the court. This remains true today. Section 16-3-22, N.M.S.A., 1953 Compilation which provides for the disbursement of the court fund provides in part as follows:

". . . when collected it shall be turned over to the county treasurer, to be by him disbursed for the payment of the expenses of the district court in his county only as provided by law or upon a certificate of the clerk of the district court the district in which his county is situated, that an allowance has been made by said court, and no court shall authorize the issuance of any certificate on any account whatsoever unless there shall be at the time money in the county treasury to meet and pay such certificate . . .

and any such treasurer who shall disburse any of the money provided for in this section except as provided by law or as herein provided shall be deemed guilty of a felony . . ."

In a very early Attorney General Opinion, unnumbered but found at page 78 of the 1909-1912 Report of the Attorney General, we pointed out that there is no statutory provision authorizing the payment of expert witnesses for their professional services from the county court fund. This also remains true today. The early opinion also indicated that it would only be proper to hire expert witness and pay him out of the court fund, if that expert were testifying in behalf of the prosecution. Because of the vastly different approach to criminal law today, we can no longer adhere to that view. We do not mean to say, however, that in every case the court fund should be used to furnish expert witnesses for the indigent defendant. We do feel, however, that such an expenditure may very well fit within the criterion laid down in opinion No. 3383, *supra*, that the Court may use its fund for any purpose connected with the administration of justice.

We therefore, conclude that a district court in the administration of justice may use its court fund to pay {**19*} for expert witnesses regardless of whether or not such an expert is testifying for the prosecution. Further, Section 20-1-4, *supra*, does not set a limitation on this fee. Perhaps, however, the fee set out in Section 20-1-4, *supra*, would furnish a good guide line for the district court to use in setting the fees for that expert which must be paid from the court fund.