

Opinion No. 66-85

June 29, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Paul J. Lacy, Assistant Attorney General

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

QUESTION

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1. Can the District Judge authorize the payment, from Court Funds, for autopsies and related costs incurred during investigations by the District Attorney's Office?
2. Can this be paid from money received from the State Court fund where there are no County Court Funds available for such purposes?

CONCLUSIONS

1. Yes, in counties with a population of less than 100,000 persons.
2. No.

OPINION

{*112} ANALYSIS

At common law, costs were generally unknown both in civil and criminal cases. C.J.S., Vol. 20, Costs, Sections 2 and 435. Consequently costs are ordinarily allowed only where there is statutory authority. **Reck v. Robert E. McKee General Contractors**, 287 P.2d 61, 59 N.M. 492.

The County Court Funds are set up in Section 16-3-22, N.M.S.A., 1953 Compilation. The moneys in the Court Funds are to be "disbursed for the payment of the expenses of the district court" upon allowance by the District Judge. This fund is generally held to be under the absolute control of the District Court and its discretion in disbursing the money is very broad, limited only to "purposes connected with the administration of justice." Attorney General's Opinion No. 3383, January 6, 1940, Attorney General's Opinion No. 57-64, April 1, 1957.

In Attorney General's Opinion No. 1806, October 29, 1937, it was held that post-mortem examination could be paid out of the Court Fund set up under Section 34-306, 1929 Compilation, which Section is now 16-3-22, N.M.S.A., 1953 Compilation. The funds

could be allowed in cases where such examinations "are necessary to obtain evidence in homicide cases" and when in the discretion of the District Court they are "necessary in the administration of justice."

This Opinion and later ones allowing broad discretion in the District Courts in disbursing County Court Funds are authority that autopsies and related costs may be allowed from them. However, one exception should be noted. In counties with a population of 100,000 or more in the last federal decennial census, the office of coroner is created. Section 15-43-43, N.M.S.A., 1953 Compilation, (P.S.). In such counties, the coroner is in charge of autopsies and examinations to show the condition of the body and cause of death in cases where death may have been caused by criminal act or if the cause of death is obscure. Section 15-43-46, N.M.S.A., 1953 Compilation (P.S.). All expenses of the office of the coroner are paid by the Board of County Commissioners. Section 15-43-49, N.M.S.A., 1953 Compilation, (P.S.). Thus, costs to the District Attorney in conducting autopsies and related examinations should not be allowed {^{*113}} from the County Court Funds, in counties where the office of coroner is created.

Under a 1963 amendment to the laws regulating the county Court Funds, additional funds for expenses not anticipated in the trial of cases in counties and not covered by the maximum tax levy authorized under Section 16-3-22, N.M.S.A., 1953 Compilation may be obtained from the "State Court Fund." Section 16-3-27, N.M.S.A., 1953 Compilation (P.S.). On or before May 1, each year, the district judge of each district must certify to the State Tax Commission the amount of money required in each county of his district for the trial of cases. The Commission is authorized to levy a state court fund tax sufficient to produce the amount, if any, over and above what would be available from the maximum levy in each county.

Under Section 16-3-28, N.M.S.A., 1953 Compilation (P.S.), funds from the "state court fund" are disbursed "only for the purpose of the **trial** of criminal cases in such county". In construing the words "trial of criminal cases", Attorney General Opinion No. 60-224, December 9, 1960, held that "trial" did not include the preparatory or investigative phases of a criminal trial such as depositions, laboratory tests and the like. The court clerk must itemize the disbursement of such funds. Under that authority, costs for autopsies incurred during investigations by the District Attorney's Office cannot be allowed from state funds where there are no county court funds available.