

Opinion No. 67-131

November 2, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. William S. Martin, Jr. Assistant District Attorney Office of the District Attorney
Silver City, New Mexico

QUESTION

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1. May the Sixth Judicial District be classified as an employer under the New Mexico Workmen's Compensation Act?
2. Is a district attorney engaged in extrahazardous activity?
3. Is a district judge engaged in extrahazardous activity?
4. Are the employees of a district judge or a district attorney engaged in extrahazardous activity?
5. If the answer to questions 2, 3, or 4 is yes, may the cost of such coverage be paid from the District Court fund (assuming the choice is made to come under this act)?

CONCLUSIONS

1. No.
2. No.
3. See analysis.
4. See analysis.
5. See analysis.

OPINION

{*208} ANALYSIS

The answer to your first question is no. Section 59-10-12.8, {*209} N.M.S.A., 1953 Compilation (P.S.) lists legal entities which are "employers" under the Workmen's Compensation Act. Judicial districts are not mentioned. Further, judicial districts are not mentioned as employers under Section 59-10-2, N.M.S.A., 1953 Compilation. Relying

on those two sections, it is the opinion of this office that the Sixth Judicial District may not be classified as an employer within the meaning of the New Mexico Workmen's Compensation Act.

The answer to your second question is no. A district attorney is not engaged in extrahazardous activity as defined in Section 59-10-10, N.M.S.A., 1953 Compilation. A district attorney is responsible for prosecuting criminal offenders through proper court proceedings. At no time is he obligated to arrest disturbers of the peace.

In an opinion based upon common law, this office ruled in 1960 that a district judge may be involved in extrahazardous activity. Opinion of the Attorney General, No. 60-29, dated February 24, 1960. It was set out that a district judge serves as both conservator of the peace and judicial officer. In the former capacity, a judge may arrest a wrongdoer. When doing so, he is engaged in an extrahazardous activity. In the latter capacity, the judge hears arguments and makes decisions, and so is not engaged in extrahazardous activity.

Based upon the common law and the duties of a judge in earlier times, the above cited opinion is a correct statement of the law. Realistically however, a judge rarely, if ever, attempts to arrest a person disturbing the public peace. The many duties that fall upon any court prevents a judge, as a practical matter, from acting in any capacity but that of a judicial officer. Therefore, it is the opinion of this office that the opinion cited above should be realistically applied to present day judges. By so doing, it is apparent that a judge is not engaged in extrahazardous activity as defined under the Workmen's Compensation Act.

As to your fourth question, it is the opinion of this office that employees of the district attorney and district judge are state employees who fall under the coverage of the Workmen's Compensation Act, Section 59-10-4(B). This is true, in part, because the district courts and district attorneys are funded by the general fund, Chapter 2, Sections 2 and 3, Laws of 1967. See **Ward v. Romero**, 17 N.M. 88 (1912).

However, Section 59-10-10, N.M.S.A., 1953 Compilation enumerates the activities considered as extrahazardous within the act's meaning. It is difficult to see how any employee of a district judge could be engaged in an extrahazardous activity. As for the district attorney's office, the only individual who might qualify is a special investigator. But this office did some investigating into the activities of special investigators for district attorneys. It is the opinion of this office that these individuals do not arrest; they merely gather facts through various means and report back to the district attorney. Therefore, they do not qualify as being engaged in extrahazardous activity.

Assuming they do so qualify, the costs may be paid from the appropriate fund available to the district attorney for his staff. The district court's costs may be paid for out of the district court fund provided the "ends of justice" are furthered thereby. Opinion of the Attorney General No. 66-14, dated January 31, 1966.

By: Donald W. Miller

Assistant Attorney General