

Opinion No. 68-76

July 24, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: E. T. Johnson Court Administrator Administrative Office of the Courts Supreme Court Building Santa Fe, New Mexico

QUESTION

QUESTIONS

In view of the changes in the basic law regarding the administration of justice made by Chapter 69, Laws 1968, effective July 1, 1969, in what manner may the following items be budgeted by the district courts in the State of New Mexico?

1. Cost of janitor service, utility service, lighting and heating equipment for Court facilities?
2. Cost of transcripts of preliminary examinations when the defendant is bound over to the District Court and the transcript is filed with the District Court.
3. Cost of insurance on court library, facilities of the courtroom and District Court Clerk's office.
4. Workmen's Compensation for Court employees.
5. Medical witnesses.

CONCLUSIONS

1. See analysis.
2. See analysis.
3. See analysis.
4. See analysis.
5. See analysis.

OPINION

{*124} **ANALYSIS**

Opinion of the Attorney General No. 68-61, dated June 13, 1968, discussed the budgeting of the items listed above (with the exception of number 5). Opinion No. 68-61 was issued in reference to Section 16-3-22, N.M.S.A., 1953 Compilation which governed disbursements from the District Court Funds. Chapter 69, New Mexico Laws 1968, has repealed Section 16-3-22. Section 56 of Chapter 69, N.M. Laws 1968 is entitled "Temporary Provisions-Transfer of Funds," and states that the court fund in each county is abolished as of July 1, 1969 and that: "the county treasurer of each county [On July 1, 1969] shall remit the balance remaining in the court fund to the state treasurer for credit to the state general fund."

Chapter 69, New Mexico Laws, 1968 has made new provisions for the financing of the district courts of New Mexico. Section 35 of Chapter 69 states that effective as of the year beginning January, 1969 each board of county commissioners shall levy for district court purposes a tax of one mill of each dollar of the assessed value of taxable property in the county. The amount of the tax collected shall then be remitted to the state treasurer for credit to the state general fund rather than being remitted to the county treasurer for the purpose of the district court fund as was required by the old statute.

Section 37 of Chapter 69 which enacted the new section 16-3-23, N.M.S.A., 1953 Compilation, entitled "Finance -- payment of expenses" states in subsection A:

"All money for the operation and maintenance of the district courts and juvenile courts shall be paid by the state treasurer upon warrants of the director of the department of finance and administration, supported by vouchers of the district judges and in accordance with budgets approved by the administrative office of the courts and the state budget division of the department of finance and administration."

The budgeting of Items No. 1, i.e., self, in view of the changes made by the new law set forth in Chapter 69, New Mexico Laws 1968, of how may the items enumerated in the question, set forth above, be budgeted?

The burgeting of Items No. 1, i.e., the pro rata costs of janitor service, utility service, lighting and heating of equipment and court facilities is clearly provided for by the new law in Chapter 69. Section 25 of Chapter 69 has enacted a new section 16-3-11, N.M.S.A., 1953 Compilation. It reads as follows:

"16-3-11. OPERATION -- LOCATION OF COURT -- FACILITIES. -- In each county, the district court shall be held at the county seat. Each board of county commissioners shall provide adequate quarters for the operation of the district court, and provide necessary utilities and maintenance service for the operation and upkeep of district court facilities. From the funds of each judicial district, furniture, equipment, books and supplies shall be provided for the operation of each district court within the judicial district."

The language and intent of the legislature could not be clearer. The board of county commissioners is to provide quarters, utilities and maintenance service. Janitor service

would be included in the words "maintenance service." The district courts therefore do not have to budget for those items.

In answering item 2, this office assumes that the question is asked with regard to indigent defendants. {*125} The answer to item 2 is found in the Indigent Defense Act which is found in Sections 58 through 68 of Chapter 69. Section 65 states that the payment of expenses under the Indigent Defense Act shall be made from "funds appropriated to the district court with respect to all stages of proceedings initiated in the District Court". (Section 65 A (2)). Section 65 further provides in Subsection B that "The court assigning counsel under the Indigent Defense Act shall pay costs, including the cost of transcripts where appropriate" It is therefore the opinion of this office that if the court deems it appropriate that the transcript of the preliminary examination be filed with the District Court, the cost of such transcript may be paid from the funds appropriated to the District Court. It is therefore necessary that such costs be budgeted by the district courts.

Whether the district court should budget for the cost of insurance for the court library, facilities of the courtroom and the district court clerk's office (Item 3) is answered in Section 25 of Chapter 69. It is the opinion of this office that if the board of county commissioners is required to provide quarters for the operation of the district court, then the cost of insurance for those quarters should be budgeted by the county commissioners.

For the answer to the question whether such quarters have to be insured see Section 6-1-4, N.M.S.A., 1953 Compilation and Opinion of the Attorney General, No. 63-81 issued July 15, 1963.

If the court should desire insurance on the furniture, equipment, books and supplies, then that cost should be budgeted by the court as Section 25 states that those items are to be provided from the court funds.

Section 22 of Chapter 69 states that the "personnel of the district court are subject to all laws and regulations applicable to state offices and agencies and state officers and employees except where otherwise specifically provided by law." The answer to item 4 is therefore the same as the answer to question four in Opinion of the Attorney General No. 68-61, dated June 13, 1968. Since court personnel is not engaged in "extra hazardous" occupations the district court does not have to provide for workmen's compensation insurance for court employees unless it voluntarily elects to do so.

Section 37 of Chapter 69 in Subsection B states:

"The district judge may authorize the establishment of a checking account, designated as the 'district courts special operations account', in a federally-insured bank. In accordance with budgeting requirements, warrants of the director of the department of finance and administration may be deposited to the district court special operations account, and checks on the account may be written by the district judge or his

authorized representative for payment of: (1) jury fees and expenses; (2) witness fees and expenses; (3) petty cash expenses."

The answer to item 5 regarding medical witnesses is found in the words "witness fees and expenses." Medical witness costs may therefore be budgeted by the district court to be included in the newly created "District Court Special Operations Account."

By: Warren O. F. Harris

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