

## Opinion No. 69-122

October 24, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General F. Stephen Boone, Assistant Attorney General

**TO:** Lloyd J. Frost, Chief, Budget-Financial Control Division, 430 State Capitol, Santa Fe, New Mexico 87501

### QUESTIONS

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1. Is a district court reporter, being paid on a full-time basis, entitled to additional compensation for reporting services in magistrate courts during regular working hours?
2. Is a juvenile probation officer, a full-time employee of the district court, who is called upon by the district attorney to act as an interpreter in magistrate court during regular working hours entitled to additional compensation for such services?

#### CONCLUSIONS

1. No.
2. No.

### OPINION

#### {\*196} ANALYSIS

The basis for deciding both questions presented above is the same, as is the result.

Both individuals are requesting payment for services rendered during regular working hours, on Friday July 11, 1969, and each is a full-time employee of the district court being paid a statutory salary for full-time work.

The problem here hinges on whether these two employees were {\*197} performing official court functions on the day in question or whether they were performing these services on a private contractual basis.

If they were performing the rendered services on a private contractual basis then they are entitled to the standard compensation for such services to be paid by whoever authorized their employment. But, if such is the case, they would not be entitled to per diem and travel expenses since under Section 16-3-10, N.M.S.A., 1953 Compilation, such travel expenses and per diem can only be claimed by district court employees

"while absent from their principal offices **upon official business**". (Emphasis added). Both employees should also have had one day's salary subtracted from their pay for that month or one day subtracted from their accrued annual leave, since, if they were attending to private interests for the whole day, it would have been impossible for them to perform their district court duties at the same time.

If, on the other hand, both employees were on official court business, as we assume they were since both claimed per diem and travel expenses, then each was merely doing that for which he was already being paid and neither is entitled to compensation in addition to per diem and travel expenses.

The question of whether or not a court reporter could be paid from the court fund as a full-time court reporter and also be paid from the court fund for other court related duties assigned by the district judge, exclusive of transcript fees, was answered in Attorney General Opinion No. 64-152, dated December 17, 1964, and the conclusion was the same as stated above.

That opinion stated that fulltime employees of the district court are under the supervision of the district judge, and the judge could assign to such employees various court related duties which, though not specifically related to the particular position or title of the employee, were still services rendered to the court. Such duties would be part of that individual's obligation to the court, as its fulltime employee, and the employee would not be entitled to additional compensation for this performance.

The only exceptions to this rule would be specific statutory exemptions, such as transcript fees for court reporters, and even then it is assumed that the preparation of transcripts would be done at such times as not to interfere with other duties.