

Opinion No. 69-55

June 12, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Mark B. Thompson, III,
Assistant Attorney General

TO: Mr. E. T. Johnson, Court Administrator, Supreme Court of New Mexico, Supreme
Court Building, Santa Fe, N.M. 87501

QUESTIONS

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May the magistrate of Division 3, Santa Fe District, and Division 2, San Miguel District be paid their full salaries for the period of January 1, 1969 through June 30, 1969?

CONCLUSION

Yes.

OPINION

{*81} ANALYSIS

Laws of New Mexico 1968, Chapter 62, Sections 30 and 31 created magistrate courts Divisions 1 and 2 in San Miguel County and magistrate courts Divisions 1, 2 and 3 in Santa Fe County. In Section 38 of the Laws of 1968, Chapter 62 the legislature established the annual salaries for all magistrates by district and division, but omitted establishing a salary for San Miguel Division 2 and Santa Fe Division 3.

In accordance with Section 5 of Laws 1968, Chapter 62, being Section 36-1-3, N.M.S.A., 1953 Compilation (1968 Interim Supp.), elections were held in both San Miguel Division 2 and Santa Fe Division 3. Those positions were filled by election and persons so elected took office and qualified as of January 1, 1969 for a term running until December 31, 1970, the initial term for all magistrates. The magistrates in San Miguel Division 2 and Santa Fe Division 3 have been fulfilling the duties of their office since January 1, 1969.

The legislature in the 1969 session rectified the oversight of the 1968 law by enacting Chapter 231, Section 2 of which establishes an annual salary for San Miguel Division 2 of \$ 4,000 and an annual salary for Santa Fe Division 3 of \$ 2,000. Section 3 of Chapter 231, Laws of 1969, appropriated \$ 6,000 to the Administrative Office of the Courts for "the purpose of this act during the 57th fiscal year." The section further provides that any unexpended portion of the appropriations reverts to the general fund at the end of the 57th fiscal year. The 57th fiscal year runs from July 1, 1968 to June 30, 1969. See

Section 11-2-1, N.M.S.A., 1953 Compilation. "This act" refers, of course, to Laws 1969, Chapter 231 which establishes the annual salaries for the San Miguel Magistrate {*82} District Division 2 and Santa Fe Magistrate District Division 3.

It would seem clear, therefore, that the legislature intended for the magistrates of San Miguel Division 2 and Santa Fe Division 3 to receive their full salary for that portion of the 57th fiscal year in which they are qualified and acting as magistrates. This would place them in an equal position with their fellow magistrates whose salaries were appropriated by Laws of 1968, Chapter 71, Section 5B. Both the 1968 and 1969 appropriations refer to the entire 57th fiscal year, but the magistrates did not take office until January 1, 1969 and in effect will have only worked for one-half of the 57th fiscal year. The \$ 6,000 appropriation in Chapter 231 of Laws 1969, is obviously adequate to cover the combined six months salaries of \$ 3,000 for both magistrate positions in question.