

Opinion No. 70-68

July 23, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Mr. John G. Jasper Executive Director Department of Health & Social Services
P.E.R.A. Building Santa Fe, New Mexico 87501

QUESTIONS

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Under Section 36-8-3 (B), N.M.S.A., 1953 Compilation, are county sanitarians exempt from paying the ten dollars filing fee for filing a criminal complaint in magistrate court?

CONCLUSION

Yes.

OPINION

{*115} ANALYSIS

Section 36-8-3 (B), *supra*, reads:

"Any person filing a complaint in a criminal action in the magistrate court shall pay in advance the costs required by law to be collected by magistrates, except that no costs shall be collected from a campus security officer, a municipal police officer, an Indian tribal or pueblo law enforcement officer or from a full-time, salaried county or state law enforcement officer filing the complaint."

If county sanitarians are to be exempt from paying the required ten dollars filing fee they must be included in the exception pertaining to law enforcement officers. The question therefore becomes, is a county sanitarian a law enforcement officer as that term is used in the statute?

All sanitarians must be registered as provided in the Sanitarian Registration Act (Sections 67-28-1 to 67-28-12, N.M.S.A., 1953 Comp.). County sanitarians are responsible for enforcing directly and indirectly state and local ordinances and departmental regulations. The list of regulations they are required to enforce is extensive. It is composed principally of those adopted by the Department of Health and Social Services under the authority contained in Sections 12-1-1 through 12-1-31, N.M.S.A., 1953 Compilation. Most, if not all, of these laws and regulations are ultimately tied to some criminal provision. See, e.g. Sections 12-1-17, 12-1-23 (C), 12-3-1, 12-3-15, 54-1-5 and 54-3-15, N.M.S.A., 1953 Compilation.

The phrase "law enforcement officer" generally brings to mind a police officer. However, its legal definition is much broader. It may include any person who is empowered to enforce laws. **Vandiver v. Williams**, 106 Ga. App. 435, 127 S.E.2d 168 (1962); **State v. Grant**, 102 N.J. Super. 164, 245 A.2d 528 (1968).

The exceptions set out in Section 36-3-8 (B), **supra**, clearly indicate that the Legislature did not intend this statute to be a deterrent to the state or counties in the enforcement of their laws and regulations.

From this analysis it is clear that a full-time, salaried county sanitarian is a law enforcement officer as that term is used in Section 36-3-8 (B), **supra**, and therefore, is exempt from paying the ten dollars filing fee for a criminal complaint in magistrate court.

It must be noted that employees of the Department of Health and Social Services or of any other department or political subdivision of the state that *{*116}* are exempt from paying this filing fee because they are full-time, salaried law enforcement officers are only exempt from the payment of this fee as long as they are acting in their official capacity and enforcing the laws that they were hired by the department or political subdivision to enforce.

By: Gary O'Dowd

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