

Opinion No. 72-45

September 8, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Robert E. Kirkpatrick, Director, Department of Finance and Administration, Legislative-Executive Building, Santa Fe, New Mexico 87501

QUESTIONS

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May District Attorneys continue to be paid at the pre-Children's Code rate?

CONCLUSION

Yes.

OPINION

{*74} ANALYSIS

Section 17-1-4, NMSA, 1953 Comp. provides that District Attorneys shall receive the salary prescribed by law as does Article VI, Section 24, New Mexico Constitution. Section 17-1-3.2, NMSA, 1953 Comp. provides a salary of \$ 3,000 per year in all judicial districts except the second where the prescribed salary is \$ 9,000 per year. In addition, Section 13-8-5, NMSA, 1953 Comp., provided as follows:

"Each district attorney is ex officio juvenile court attorney in his judicial district, and as juvenile court attorney shall receive a salary of nine thousand dollars (\$ 9,000) a year from the state general fund. No additional salaries shall be paid on account of services rendered the state as juvenile attorney."

This statute was repealed by N.M. Laws 1972, Chapter 97, Section 71, a portion of the Children's Code. In its stead the following was enacted [compiled as Section 13-14-5 (1972 Interim Supp.)]:

"13-14-5. Children's court attorney. -- A. The office of children's court attorney is established in each judicial district. Each district attorney is ex officio children's court attorney for the judicial district of the district attorney.

B. The children's court attorney may represent the state in any matter arising under the Children's Code [13-14-1 to 13-14-45] when the state is the petitioner in matters arising under the Children's Code when in the discretion of the judge the matter presents legal

complexities requiring his representation, whether or not the state is petitioner or complainant, but not in those matters when there is a conflict of interest between the petitioner or complainant and the state. A petitioner or complainant may be represented by counsel in any matter arising under the Children's Code.

C. In those counties where the children's court attorney has sufficient staff and the workload requires it he may delegate his functions to an attorney on his staff."

It is at once apparent that this section contains no salary provision for a district attorney's service as children's court attorney. Thus the only salary for a district attorney now prescribed by law is \$ 3,000 per year except for the second judicial district where it is \$ 9,000 per year.

The legal basis for continuing to pay district attorneys at their pre-Children's Code rate is found in Article IV, Section 27 of the New Mexico constitution, which reads:

"No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; **nor shall the compensation of any officer be increased or diminished during his term of office, except as otherwise provided in this Constitution.**" (Emphasis added)

For the **particular** office of district attorney there is nothing "otherwise provided in [the] Constitution" permitting his salary to be decreased or diminished during his term of office. {*75} Since the elected district attorneys' terms of office do not expire until December 31, 1972, they are to continue to receive their \$ 12,000 salary (\$ 18,000 in the Second Judicial District) until that time.

Presumably in the next legislative session in January the legislature will enact a new district attorney salary statute.