

## Opinion No. 73-28

March 7, 1973

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Larry D. Coughenour Director Administrative Office of the County Supreme Court  
Building Santa Fe, New Mexico 87501

### QUESTIONS

#### QUESTIONS

Is the Board of County Commissioners of each county obligated to provide quarters for county magistrate courts?

#### CONCLUSION

No.

### OPINION

#### {\*49} ANALYSIS

The legislature has not provided specifically for quarters for magistrate courts, as it has for district courts in Section 16-3-1, N.M.S.A., 1953 Comp., and probate courts in Section 16-4-7, N.M.S.A., 1953 Comp. However, Section 36-9-9, N.M.S.A., 1953 Comp., provides:

"The administrative office of the courts shall provide **facilities** for each magistrate court. Counties and municipalities shall cooperate and assist wherever possible." (Emphasis supplied.)

"Facilities" is not defined by the statute, and we have been unable to discover any definition which would make it synonymous with "quarters." Ordinarily "facilities" would include furniture, fixtures, utilities and office supplies, all of which your office provides to the magistrate courts without further statutory authority. See **Illinois Bell Telephone Co. v. Milner**, 11 Ill. App.2d 44, 136 N.E.2d 1, 9 (1936); **Caldwell v. McMillan**, 224 s.c. 150, 77 S.E.2d 798, 800, 801 (1953); Webster's New International Dictionary, 2nd Ed., 1955.

The pattern, as established for district courts and probate courts, is to require the counties to provide quarters for the courts. Courthouses have been held to be chiefly for the use of the courts, other uses being subordinate and to a great extent incidental. **Board of County Commissioners of Vigo County v. Stout**, 136 Ind. 53, 35 N.E. 683, 685, 22 L.R.A. 398 (1893); **Harriss v. State**, 72 Miss. 960, 18 So. 387, 388, 33 L.R.A.

85 (1895); **Johnson City Buick Co. v. Johnson**, 165 Tenn. 349, 54 S.W.2d 946 (1932).

Desirable as it is to have all the courts in the courthouse where possible, there are several factors which lead us to a contrary conclusion regarding legislative intent as far as magistrate courts are concerned.

First, justice of the peace courts, which were supplanted by magistrate courts by virtue of the amendment to Article VI, Section 26, of the New Mexico Constitution, adopted November 8, 1966, were never required by statute to be located in courthouses, or, indeed, to be furnished any quarters by the counties.

Second, the legislature in each session since 1967 consistently has appropriated {\*50} funds to your office for the purpose of renting quarters for magistrate courts where such were not provided by counties or municipalities. This is a strong indication that the legislature has interpreted "facilities" as including quarters.

Third, the 31st legislature, now in session, has killed House Bill 514, which would have put this burden on the counties in those magistrate districts in which courthouses are located. While this action could be interpreted as meaning that the legislature considered that the counties already had this burden, and therefore that further legislation was unnecessary, in view of the other reasons listed herein we believe that an opposite interpretation must be given, that is, that the legislature did not see fit to place this burden on the counties. Also, even if this bill as proposed had been adopted, it would not have required the counties to provide quarters for magistrate courts in those districts which do not include courthouses within their boundaries; this would have strengthened the argument that the legislature intended for your office to provide quarters in such instances.

Perhaps we should point out that Section 15-37-15, N.M.S.A., 1953 Comp., places on the county commissioners the duty

". . . To build and keep in repair all county buildings, and in case there are no county buildings, to provide suitable rooms for county purposes."

Further, Section 15-37-16 gives the county commissioners the duty

"To represent the county and have the care of the county property and the management of the interest of the county in all cases where no other provision is made by law."

It can certainly be argued that county magistrate courts are "county purposes," that it is the "interest of the county" to provide them with "suitable rooms," and that "no other provision is made by law" within the meaning of the quoted statutes. The magistrate court districts are located as they are to make them convenient to the citizens of the counties, and of the municipalities too, for that matter. No doubt this is why the legislature put in Section 36-9-9, **supra**, the provision that

"Counties and municipalities shall cooperate and assist wherever possible."

It would certainly save the state a considerable amount of money if magistrate courts were provided quarters in the county courthouses and in city halls where possible, and this would be convenient to law enforcement officers and litigants alike.

Nevertheless, for the reasons given, the answer to your question has to be in the negative.

By: Dee C. Blythe

Assistant Attorney General