

Opinion No. 75-36

July 11, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Joseph F. Halpin, Administrator State Records Center and Archives 404
Montezuma Santa Fe, New Mexico 87501

QUESTIONS

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Are records that are created and received by the District Attorney's offices subject to the provisions of the Public Records Act (71-6-1 to 71-6-24, NMSA, 1953) for purposes of care, custody, preservation and disposition of records?

CONCLUSION

Yes.

OPINION

{*103} ANALYSIS

The Public Records Act applies to

"Any state agency, department, bureau, board, commission, institution or other organization of state government, the territorial government . . ." Section 71-6-2(D), NMSA, 1953 Comp.

We conclude that the records of the office of district attorney are subject to the Act because the office of district attorney is a state office within the meaning of the Act.

Historically, the office of district attorney was conceived as an office of the Territory of New {*104} Mexico. The 1909 Acts of the Legislative Assembly of the Territory of New Mexico, Chapter 22, provided for the appointment of a district attorney by the Governor for such districts as may be established by law. In **Ward v. Romero**, 17 N.M. 88, 125 P. 617 (1912), the Supreme Court explained:

"He was made the law officer of the Territory, and the fact that he may have performed his duty, in prosecuting and defending suits, within defined limits did not make him any less the representative of the Territory." 17 N.M. 93.

The New Mexico Constitution retained the district attorney as the state law officer by providing at Article VI, Section 24, that:

"There shall be a district attorney for each judicial district . . . [who] shall be **the law officer of the state** and of the counties within his district . . ." (Emphasis added.)

Other legal evidence tends to support the conclusion that the district attorney is a state officer. Although each district attorney is elected from the district which he would serve, he is "paid by the state treasurer from funds appropriated to the district attorneys in the respective judicial districts." Section 17-1-5, NMSA, 1953 Comp. While it has not been determined whether the removal provisions of Article IV, Section 36 of the Constitution applying to "All state officers and judges of the district court . . ." apply to district attorneys, it has been held that district attorneys are **not** subject to Section 5-3-3, NMSA, 1953 Comp. which provides for the removal of "Any county, precinct, district, city, town or village officer elected by the people . . ." **State v. Rogers**, 57 N.M. 686, 262 P.2d 779 (1953).

That the question is raised at all is because of the term "district." The constitutional convention, apparently for the purpose of organizing a state judicial system, determined that the state be divided into judicial districts. N.M. Const. Article VI, Sections 12 and 25. See also Section 16-3-1, NMSA, 1953 Comp. Each judicial district has a district court which is an agency "of the judicial department of state government" and whose personnel are subject to laws and regulations applicable to state officers. Section 16-3-8, NMSA, 1953 Comp. It is our opinion that the division of the state into judicial districts with the attendant establishment of district courts, district judges and district attorneys was not for the purpose of creating a sublevel of government but rather for the purpose of organizing the state judicial department within geographic bounds.

The New Mexico Supreme Court in **Ward v. Romero, supra**, a case concerning the applicability of Article IX, Section 20 of the Constitution, held specifically that district attorneys were state officers. The decision was based in part on the clear language of territorial laws and the constitution and in part on the construction of the term "district" as geographic.

The court in **Ward** stated that the Constitution intended the designation of district to define the geographic limits within which the duties of the officer were to be exercised rather than to define a separate and distinct class of officers.

The judicial determination that a district attorney was a state officer has been reaffirmed in **Crist v. Abbott**, 22 N.M. 417, 163 P. 1085 (1917) and **State v. Collins**, 28 N.M. 230, 210 P. 569 (1922). In **Ulrick v. Sanchez**, 32 N.M. 265, {*105} 255 P. 1077 (1927) the court conceded that district attorneys were state officers at least for purposes of Article XX, Section 9 of the Constitution but even that narrower holding does not conflict with the reasoning of **Ward** which is applicable here.

Thus, we are persuaded that district attorneys are state officers and that the office of district attorney falls within the broad definition of "agency" as used in the Public Records Act. The records of the district attorney's office are then subject to provisions of

the Act for purposes of "care, custody, preservation and disposition." See Laws of 1959, Chapter 245.

We would note, however, that our opinion does not affect questions of confidentiality or access to records as those questions are determined by other laws. See, for example, the Arrest Record Information Act, Laws of 1975, Chapter 260, Inspection of Public Records, Sections 71-5-1 to 71-5-3, NMSA, 1953 Comp., and the Children's Code at Section 13-14-42, NMSA, 1953 Comp.

We would also note that effective July 1, 1975, Sections 71-6-15 and 71-6-17 contain the phrase "For purpose of this section, 'state agency' shall include the district courts." Laws of 1975, Chapter 215. It may be inferred from this language that district courts were not otherwise covered by the Act, and for this reason, the question may be raised as to the status of the office of district attorney. On the other hand, since it is **expressly** stated at Section 16-3-8, **supra**, that "The district courts are agencies of the judicial department of the state government," we would not be dissuaded by this language from our position that judicial districts are an organization of state government and the office of district attorney is a state office subject to the provisions of the Public Records Act.

By: Jill Z. Cooper

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