

## Opinion No. 75-12

February 13, 1975

**BY:** OPINION OF TONEY ANAYA, Attorney General

**TO:** Honorable Harry M. McAdams State Senator Capitol Building Santa Fe, New Mexico 87503

### QUESTIONS

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In what situations is a district judge whose residence is located in a city in which the district court has an office that is other than the county seat entitled to per diem and mileage when his official duties require his presence at the county seat?

#### CONCLUSION

See analysis.

### OPINION

#### {\*48} ANALYSIS

Section 16-3-10, NMSA, 1953 Comp. provides:

"Personnel -- Travel Expenses. -- District judges and district court employees shall be allowed per diem and shall be reimbursed for their necessary travel expenses **incurred while absent from their principal offices upon official business**, at the same rates and under the same conditions as prescribed by law or regulation of the state board of finance for other employees of the state. These expenses shall be paid from the funds of the district court of the judicial district from which the business is transacted."  
(emphasis supplied.)

This statute establishes, as a condition precedent to the payment of either per diem or mileage to the district judge that the district judge must be absent from his principal office. The principal office of the district judge is the county seat of one of the counties in his judicial district. Section 16-3-4, dated March 6, 1973.

Section 5-10-3(D), NMSA, 1953 Comp. (1974 Interim Supp) establishes an additional requirement for payment of mileage:

"Every public officer or employee shall receive twelve cents (\$ .12) a mile for each mile traveled in a privately owned vehicle . . . **if the travel is necessary to the discharge of his official duties.** . . ." (emphasis added.)

The only criteria set forth by Sections 16-3-10 and 5-10-3 (D), **supra**, for the payment of mileage to the district judge are (1) he must be away from the principal office and (2) the travel must be for official business. The place of residence of the judge is not a relevant factor in the determination of whether or not the criteria for mileage payments are satisfied. The district judge is entitled to mileage when he travels from the county seat to the additional office in the city of his residence in order to conduct official business in the additional office and when he is present at the additional office on official business and then travels from the additional office to the county seat.

In order to be eligible for payment of per diem pursuant to Section 5-10-3(B), NMSA, 1953 Comp. the district judge must be **both** ". . . away from his home and away from his designated post of duty on official business . . ." The judge cannot be eligible for per diem for travel between the city of his residence and the county seat which is his principal office because such trips will not take him away from his home and his principal office at the same time.

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