

Opinion No. 79-04

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OPINION OF: Jeff Bingaman, Attorney General

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TO: Larry Coughenour, Director, Administrative Office of the Courts, Supreme Court Building, Santa Fe, New Mexico 87503

COUNTIES

The Board of County Commissioners is responsible for providing security for the county courthouse on a twenty-four hour basis.

QUESTIONS

Who is responsible for providing security for the county courthouse on a twenty-four hour basis?

CONCLUSIONS

The Board of County Commissioners.

ANALYSIS

The provision of adequate security for the county courthouse during office hours, nights and weekends would be the responsibility of the Board of County Commissioners pursuant to Section 4-38-18 NMSA 1978. Section 4-38-18, **supra**, provides that the Board of County Commissioners is responsible for the "care of county property and the management of the interest of the county in all cases where no provision is made by law." This statute has been interpreted as a grant of general management authority to the Board of County Commissioners with respect to county affairs. See opinion of the Attorney General No. 67-145, dated December 18, 1967. As county property, the Board of County Commissioners would, therefore, be responsible for the care and management of the county courthouse.

While Section 4-38-18, **supra**, is a grant of general authority and does not specifically provide for the safekeeping of the county courthouse, counties are, nevertheless, deemed to have not only the authority expressly granted to them by the legislature, but also the authority necessary to implement the powers expressly provided to them by statute. **El Dorado at Santa Fe, Inc. v. Board of County Commissioners of Santa Fe County**, 89 N.M. 313, 551 P.2d 1360 (1976). It is sufficient if an express grant of power is broad enough to include the proposed acts in order for those acts to be within the legislative authority of the county commissioners. **Aqua Pura Co. v. Mayor**, 10 N.M. 6,

60 P. 208 (1900). Therefore, pursuant to the authority granted by Section 4-38-18, **supra**, the Board of County Commissioners may provide for the courthouse whatever security system they consider necessary for the care of the building.

Furthermore, the Board of County Commissioners is required to provide adequate quarters for the operation of the district court pursuant to Section 34-6-24 NMSA 1978, which provides as follows:

"Each board of county commissioners shall provide adequate quarters for the operation of the district court, and provide necessary utilities and maintenance service for the operation and upkeep of district court facilities. From the funds of each {*9} judicial district, furniture, equipment, books and supplies shall be provided for the operation of each district court within the judicial district."

Since, by this statute, the Board of County Commissioners is required to provide the district court with quarters, usually in the county courthouse, and is further required to provide the maintenance necessary for the operation and upkeep of those quarters, such security arrangements as may be deemed necessary by the county commissioners for such operation and upkeep would likewise be the responsibility of the county.

This would be so, even though pursuant to Section 4-41-16(C) NMSA 1978 it is the duty of the county sheriff to attend "the sessions of every district court." Although Section 34-6-2, NMSA 1978, provides that the district court is always in session, the term "sessions" of the court has been interpreted to include only that time during which a court actually conducts business. **City of Escondido v. Municipal Court**, 61 Cal. Rptr. 362 (1967). Furthermore, pursuant to Section 4-41-16(A) NMSA 1978, the statutory scheme for payment of the sheriff for attendance upon the court provides for payment on a per diem basis and not for a fee for the entire term of the court. That such a method of payment was specified would indicate legislative intent that the sheriff attend individual, daily sessions of court and not that the sheriff be present on a continuous basis during the court's term. Therefore, it would appear that Section 4-41-16(C), **supra**, only requires the sheriff's attendance at the trials and hearings of the court and does not require his presence as a round-the-clock security guard for the entire courthouse.

In conclusion, therefore, this office is of the opinion that pursuant to Section 34-6-24, **supra**, Section 4-41-16(C), **supra**, and Section 4-38-18, **supra**, the Board of County Commissioners is responsible for providing security for the county courthouse on a twenty-four hour basis if considered by them to be necessary for the care and operation of the building.

ATTORNEY GENERAL

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