

Opinion No. 13-1064

June 19, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Honorable W. G. Sargent, State Auditor, Santa Fe, New Mexico.

REFORM SCHOOL.

Cost of transporting prisoners to Reform School payable out of court fund.

OPINION

{*234} I have received your letter of the 18th inst. asking me to advise how the expenses incurred in the transportation of prisoners to the State Reform School are to be paid, and saying that as far as you know there is no provision in the law for the payment of these expenses.

This question was submitted to me by Mr. M. W. Mills, then Chairman of the Board of Trustees of the Reform School, in October, 1909, and on November 2, 1909, I wrote him as follows:

"I am in receipt of your letter of the 29th ult., relative to payment of bills for transportation of prisoners from the various counties to your institution. I am clearly of opinion that you have no authority to pay such bills out of the appropriation for the Reform School. That appropriation is "for the support and maintenance of said New Mexico Reform School," and the transportation of prisoners cannot properly be said to come under those terms. It is quite obvious, also, when we consider the amount of the appropriation, that the legislature could never have intended that such expenses should be paid from that small amount.

"I am unable to find any territorial appropriation from which such expenses can be paid. The omission to make any such appropriation is undoubtedly an oversight, due to the fact that we have never had, heretofore, any reform school ready to receive inmates. The appropriation to which you refer is specifically for conveying prisoners to the penitentiary. Under these circumstances, I believe that this expense must be payable from the court fund of the several counties, as one of the expenses of the district courts. It is an expense incurred in consequence of a judgment and order of the district court, and as the legislature has made no special provision for its payment in any other way, it must be that it is an expense properly chargeable to the court fund, created as provided in Section 923 of the Compiled Laws of 1897."

I believe that you are correct in your statement that there is no provision in the statutes as to these expenses, so that the situation remains the same as it was when I wrote to Mr. Mills and what I wrote to him is still my opinion.