

Opinion No. 16-1729

February 2, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Edward D. Tittman, Hillsboro, New Mexico.

Associate counsel may appear for a county with the district attorney by order of the court.

OPINION

{*300} We have had your letter relative to the question of the employment of outside counsel by county commissioners, for some time, and my assistant and myself have given a good deal of time to its consideration as we felt that we ought to be very careful on such a subject and express no opinion until we felt very sure of our ground. We have reached the conclusion, which is the same as our first impression upon examining the statutes, that it is possible for county commissioners to employ such counsel within the restrictions and limitations to which you call attention in your letter contained in the statute, Section 15 of Chapter 22 of the Laws of 1909, which reappears as Section 1860 of the codification.

My earlier impression was as I stated to you, in substance, in my letter of January 8th, that the legislature intended to prohibit the employment by counties of other counsel than the district attorney, but under the section above referred to, I am now convinced {*301} that it is permissible for associate counsel to appear with the district attorney with his consent and upon an order of the court. If such counsel may be allowed to appear, it is quite certain that they ought to receive compensation from someone, and if they are not employed to represent private interests and receive pay from outsiders but are acting for the county, it seems clear that the county ought to pay for the services rendered. It might be urged that the legislature could not have intended this as such a practice might lead to serious abuse and waste of the public money in some counties, but the answer to this is that the legislature has safeguarded the public interests in this direction by requiring the consent of the district attorney and an order of the district court which would be, in effect, an approval of the employment and of the consent of the district attorney. If we cannot trust the courts to prevent any serious abuse of this practice under the construction which I have given to the statute, then there is no way that the public can be protected.