

Opinion No. 23-3683

March 22, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. Alexander Read, District Attorney, First Judicial District, Santa Fe, New Mexico.

County Treasurers Should Pay the Pro Rata Share of the District Attorney's Salary Monthly.

OPINION

{*27} We have your request for opinion in which you say:

"I would like to have your opinion and construction of the different statutes in reference to the salaries of the District Attorneys, as there seems to be some confusion in the law.
* * *

"The reason I ask your opinion is that there seems to be some misunderstanding with the Treasurer of Rio Arriba County as to how the payment should be made. There is now \$ 1,100.00 in the Current Expense Fund for 1921, and he refuses to remit the fifty per centum of the Current Expense Fund for the last two quarters on account of the budget.

"Please advise me at your earliest convenience how the payment should be made, or whether or not the payment should be made from the Current Expense Fund as it is collected, or if we have to wait for the fifty per centum of the county's part until the money is collected according to the budget."

Section 1873, New Mexico Statutes, Annotated, Codification 1915, seems clearly to define the duties of the County Treasurer on the points at issue. This section makes it the duty of the Treasurer to transfer 50 per cent of the aggregate amount, required of that County to pay District Attorneys, from the Court Fund and the remainder from the Current Expense Fund, and place such amount to the credit of the County Salary Fund. There is no "District Attorney's Salary Fund" such as would appear from the Treasurer's letter you have submitted, exhibiting a copy of the "County Budget." Said Section 1873 requires the Treasurer to make "quarterly" remittances from said County Salary Fund to the State Treasurer, the contribution required of the County. (But see Section 420 of Chapter 133 of the Session Acts of 1921 which requires such Treasurers to remit state monies "monthly"). The District Attorney's salary has no place in such "budget," but the County Treasurer should pay such salary in conformity with the law as herein cited. The County Clerk has no authority to circumscribe the duties of the Treasurer in this connection.

Under Section 420 of Chapter 133 of the Session Acts of 1921, the County Treasurer of Rio Arriba County should probably be required to remit "monthly" its proper quota of the District Attorney's salary which, under the present law, is \$ 70.83 1/3.

Section 15 of Chapter 12 of the Session Laws of 1915 provides:

"Should the County Salary Fund at any time be insufficient to pay the salaries and expenses provided for to be paid therefrom, or any part thereof, the deficiency shall be paid from the Current Expense Fund, which fund shall be reimbursed to the extent of any deficiency {^{*28}} so paid as soon thereafter as funds shall be available in the County Salary Fund. * * *

Then there is no reason for a balance of \$ 1,100.00 remaining in the Current Expense Fund for 1921 when the salary due the District Attorney remains unpaid.

It might be well also to call attention to Section 3 of Chapter 16 of the Session Acts of 1919 which provides:

"That no surplus arising in said County Salary Fund shall be transferred to any other fund, but such surplus shall be transferred to and become a part of the County Salary Fund for the year following the arising of such surplus."