

Opinion No. 23-3699

May 3, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

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

The Bateman Act May not Necessarily Affect the Salary of District Attorneys.

OPINION

{*49} We have your request for opinion on the matters submitted from the Treasurer of Rio Arriba County, relating to the payment of the District Attorney. The effect of the inquiry is as follows:

"Is the meaning of Section 1873 of the Code of 1915 such that it would make it mandatory upon a County {*50} Treasurer to make this remittance for District Attorney's salary quarterly or monthly, regardless of the claims and just accounts due to others and to County Officials for services or supplies rendered -- or is the District Attorney to share pro-rata, alike with the other creditors of said county when there are not sufficient funds to pay all claims, according to section 1228 of the Code and of Chapter 188 of the laws of 1921?"

As we view it, the Bateman Act does not enter into the question at issue. The salary law with respect to District Attorneys was passed since the Bateman Act went into effect. The office of District Attorney was created by the Constitution and the Constitution was adopted since the adoption of the Bateman Act. -- Sec. 24, Art. 6, Const. The District Attorney is a state officer. -- 17 N.M. 88. He is paid by the State out of funds of the State. Sec. 1871, N.M. Stat. Ann. Code 1915. It is true there are provisions requiring the various counties to make certain remittances but the fact that these remittances are so proportioned and conditioned makes the provisions of Sec. 1873 of said Code none the less mandatory.

The law, as it stands, makes it impossible for a county to load down its budget with more or less unimportant obligations and contracts, and on invoking the provisions of the Bateman Act, thereby to defeat the payment of its just and full obligations, to the State. The State machinery, particularly of the courts, may not be hampered and embarrassed by any such means.

Senate Bill No. 67, as amended, became effective in essential particulars March 9, 1923. Section 2 thereof provides that County Treasurers shall remit all monies which are by law required to be remitted to the State Treasurer, on or before the 10th day of the next succeeding month following the receipt or collection thereof.

Section 29 of said Senate Bill provides that any person who shall wilfully or knowingly fail to perform any act required, and as required by Section 2, or who shall commit any act in violation of said act, shall be guilty of a felony and upon conviction shall be punished by a fine of not to exceed \$ 2,000.00, or by imprisonment in the penitentiary for a term of not more than three years, or by both such fine and imprisonment.