

Opinion No. 31-300

October 30, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. Arsenio Velarde, State Auditor, Santa Fe, New Mexico.

{*115} In your letter of October 29th, 1931, you desire to know if, when a prisoner waives extradition and the Governor is not called upon to sign formal requisition papers, it is necessary that the Governor approve out of the state travel by the sheriff in order that payment of expenses may properly be made.

You also wish to know if in the event the trip was made by the sheriff without prior approval by the Governor, the expenses may properly be chargeable against the county.

Both of these questions may be answered together. Section 134-506, New Mexico Statutes Annotated, 1929 Compilation, provides for the payment of expenses of officers and employees of the state and counties.

It is further provided in this section that no allowances or payment for lodging and subsistence shall in any event exceed the sum of five (\$ 5.00) dollars per day, except in cases where public officials are out of the state on necessary official {*116} business, and only then when such travel outside of the state shall have been approved in writing by the governor of the state as being necessary and essential to the public service, and all claims and vouchers for reimbursements for such lodging and subsistence when away from the state shall have the approval of the governor in writing attached thereto.

We realize that heretofore it has always been the custom to obtain the consent of the Governor before travel outside of the state has been made, and before payment of expenses are allowed.

No request has ever before been made upon this office for an opinion upon this question. As a matter of fact, however, under the law, it is not necessary to obtain the approval or the consent of the Governor for a travel outside of the state, and the law as we construe it simply means that no expenses for lodging and subsistence in excess to \$ 5.00 per day can be paid unless the travel is outside of the state. If such expenses exceed \$ 5.00 per day and is outside of the state, then such excess cannot be paid without the approval in writing by the Governor.

In other words, so long as the expenses for lodging and subsistence do not exceed \$ 5.00 per day, it is not necessary to obtain the Governor's consent for travel outside of the state.

The answer, therefore, to your first question would be in the negative if the expenses for lodging and subsistence amount to \$ 5.00 or less, but if over \$ 5.00 then the Governor should certify that such travel was necessary and essential to public service.

The above answer is also sufficient to cover the matter raised in your second question.

It is to be understood that the above and foregoing opinion is based upon the assumption that extradition proceedings have been instituted regardless of whether or not extradition was waived. It is not intended to cover cases where a county official crosses the state line and returns a prisoner where no requisition proceedings have been instituted in the first instance.

By Frank H. Patton.

Asst. Attorney General