

## Opinion No. 31-298

October 20, 1931

**BY:** E. K. Neumann, Attorney General

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

{\*113} We have your letter of October 19th, in which you refer to a letter from Miss Mayme Tierney, County Treasurer of Bernalillo County, and both of which inquire as to the authority for payment of salary of additional Assistant District Attorney in the Second Judicial District.

The employment of assistants in the office of district attorney is under Chapter 110, of the Session Laws of 1931, and this Act provides that the several counties in this State shall respectively contribute to the payment of salaries of the district attorneys, assistants and stenographers. It is provided that Bernalillo County shall contribute \$ 7200.00 and Sandoval shall contribute \$ 1800.00, these being the counties which compose the Second Judicial District.

As we understand the facts, no budget, of course, was made to pay salaries of any additional assistants for the fiscal year which ended June 30th, 1931.

The said Chapter 110, of course, did not become effective until ninety days after the adjournment of the Legislature, but regardless of when this act became effective no payment to an assistant could be made unless provision had been made in the budget therefor the year before. Of course, this could not be true.

So far as actual operation is concerned, the law could not become effective until the beginning of the {\*114} new fiscal year on July 1, 1931, and if the County Commissioners have provided in their budget for this expense for the year 1931 and 1932, that is the twentieth fiscal year, then, of course, vouchers should be honored by your office.

If no budget has been made for this expense then, of course, there is no way by which the assistant could be paid.

In our opinion there is no way by which the assistant can be paid if such assistant was employed prior to July 1, 1931.

It is true that Section 4 of Chapter 120, Laws of 1925, provides that such salaries shall be paid by the State out of any funds in the State Treasury, except those reserved for the payment of interest upon the public debt. However, Section 3 of the same Act, which is now Section 39-205 of the 1929 Compilation, provides that the several county treasuries shall make remittances to the State Treasurer covering the contributions of such counties, and the State Treasurer shall credit such remittances to the fund out of

which such salaries are to be paid, and it is further provided that these officials shall be paid only out of the funds thus standing to the credit of the judicial district for which they are acting.

It has previously been held by this office that these provisions may be reconciled by construing said Section 4 to mean, that only that part of salary which is payable by the State is to be paid "out of any funds in the State Treasury."

As hereinabove stated, therefore, unless budget allowances had been made no salary can be paid for services prior to July 1, 1931; second, unless budget has been made for the new fiscal year, services performed cannot be paid for; third, but if budget has been made for the new fiscal year, of course, vouchers should be honored when contributions by the counties have been made.

By Frank H. Patton,

Asst. Attorney General