

Opinion No. 32-479

June 21, 1932

BY: E. K. Neumann, Attorney General

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

{*164} We are in receipt of your letter of June 20th, 1932, in which you request information as to whether Mr. C. E. Blount, Assistant District Attorney for the Sixth Judicial District, has ever been admitted to the Bar of New Mexico, and you wish to know in the event that Mr. Blount has not been admitted to the Bar what action should be taken by you and whether or not you should continue to issue warrants for the payment of his salary.

You are advised, first, that Mr. Blount has never been admitted to practice law in this state and neither has there been issued to him any temporary permit.

This information is revealed by the records on file in the office of the Clerk of the Supreme Court and under the ruling of the State Board of Bar Examiners he cannot be admitted until sometime in January 1933.

Under the law of this state, district attorneys are authorized and empowered to appoint assistants, and Section 39-102, New Mexico Statutes, Annotated, 1929 Compilation, in part reads as follows:

"Each district attorney in this state may appoint a suitable person who must be an attorney at law practicing his profession in this state and a member of the bar of this state, and a citizen and resident of the district wherein such district attorney resides, to be his assistant. Every appointment of an assistant district attorney shall be in writing under the hand of the district attorney and filed in the office of the clerk of the district court of the judicial district wherein the district attorney resides, and the person so appointed shall take and file in the office of the clerk of the district court of the judicial district wherein the district attorney resides, an oath of office as is now prescribed by law for district attorneys before entering upon his duties as such assistant district attorney."

Your attention is directed to the fact that under this provision the person appointed as assistant district attorney must be an attorney at law practicing his profession in this state and a member of the Bar of this state, and further to the fact that the appointment shall be in writing under the hand of the district attorney, filed in the office of the clerk of the district court, and the appointee must take and file an oath of office with such district court clerk before entering upon his duties as assistant district attorney.

It is provided in Section 39-208 that after March 15, 1913 the salary of the assistant district attorney shall be paid direct to such assistant, and again in Section 39-102, we

find that the assistant district attorney may discharge any duties imposed by law upon, or required of the district attorney by whom he was appointed.

We gather from all of the foregoing that it was the intention of the legislature to provide for the appointment of assistant district attorneys {*165} and that such assistants should be practicing attorneys admitted to the Bar of this state, and that when appointed such assistants should have the same powers and perform the same duties as the district attorney.

We are unable to discover any provision in our statutes which authorizes the district attorney to appoint any person other than one within the foregoing qualifications to serve as an assistant district attorney.

While it may be true that the word "assistant" may have in some instances a very comprehensive meaning, yet the fact remains, in view of the provisions cited, that the word "assistant" as here under consideration means an assistant district attorney within the purview of our statutes.

For this reason it is the opinion of this office that Mr. Blount is not legally qualified to serve as an assistant district attorney, and that any appointment of him as such is without authority of law.

As to whether the district attorney who made such an authorized appointment is liable for compensation heretofore paid to Mr. Blount, we make no ruling at this time other than to say that, in all probability, such district attorney is liable on his bond.

As to future payments to Mr. Blount as assistant district attorney, this office advises that your office refuse to honor and issue any future warrants.

By Frank H. Patton,

Asst. Attorney General