

Opinion No. 33-618

July 5, 1933

BY: E. K. NEUMANN, Attorney General

TO: Honorable Juan N. Vigil, State Comptroller, Santa Fe, New Mexico.

{*63} In your letter of June 30, 1933, you enclose a letter from Mr. L. J. Adams, County Treasurer of Lincoln County, in which Mr. Adams asks for an opinion concerning the obligation of the county to pay expense incurred for boarding county prisoners prior to the payment of salaries of county officials, in a case where such expense exceeds the amount budgeted therefor. It is stated that there are now outstanding bills amounting to about \$ 300.00 for feeding prisoners, and that only \$ 51.30 was budgeted for this item.

As I understand Mr. Adams' letter, the only question about which information is desired is whether or not Section 33-4233 of the 1929 Code is applicable, in view of the fact that the expense of feeding prisoners is in excess of the budget item for that purpose. It is my opinion that said section is applicable to this situation, and that such expense must be paid before any bill, fee or salaries are paid and before any pro rata is made. The law is absolutely plain in this regard, and the only question that could be raised is whether or not Section 33-5904 of the 1929 Code has modified or by implication amended the previous statute. We do not think this is the case. On several previous occasions we have held that Section 33-5904 merely prohibits county officials from paying claims in excess of the total amount of the budget. The language of the section is easily susceptible to that construction. In fact, the identical question raised by Mr. Adams' letter was answered in an opinion by this office to Honorable James N. Bujac, Assistant District Attorney, Carlsbad, New Mexico, under date of May 10, 1932. The reasons stated in that opinion are equally applicable here.

For the purpose of regularity, and in order to keep a proper record of the transaction, I suggest that a request be made for permission to transfer funds to the budget item for feeding prisoners under the provisions of Section 134-513 of the 1929 Code, but in any event it is my opinion the terms of Section 33-4233 must be complied with.

By: QUINCY D. ADAMS,

Asst. Attorney General