

## Opinion No. 34-812

October 3, 1934

**BY:** FRANK H. PATTON, Asst. Attorney General

**TO:** Honorable J. G. Whitehouse, Assistant District Attorney, Albuquerque, New Mexico.

{\*157} We have received your letter of September the 25th, concerning the liability of counties for costs in criminal actions and prosecutions, and regret our inability to write sooner due to pressure of other matters in this office.

The writer discussed this matter for a few minutes with Judge Gober in Albuquerque several days ago and promised him at that time that we would give consideration to the subject.

I am surprised at the law governing this question and regret that it is not otherwise, but, from the study I have made, I am convinced beyond any question of a doubt that in the absence of a statute the county is not liable for costs in criminal prosecutions and I find a splendid statement of the law in 15 Corpus Juris at page 324, Section 805, which is as follows:

"At common law counties are never liable to pay any costs. If liable at all, such liability depends solely on statutes imposing it but it is competent for the legislature to enact statutes of this character. Where the common law rule is changed by statute, the county is liable only to the extent and in the manner provided thereby and only where the requisite statutory steps have been taken."

As suggested in your letter, this rule has been changed in New Mexico by virtue of Section 79-1301 of the 1929 Compilation which makes the county liable for costs in cases of inquest and also Chapter 76, Laws of 1933, which specifically makes the county liable for costs in indigent insanity cases. It is possible that there are other cases in which the county is liable for costs where specific provision has been made by statute, but I do not recall any at this time.

As above stated, I regret to find the law in this condition and believe that we should have a statute specifically making counties liable for costs in criminal prosecutions where the defendant has been convicted.

Numerous states have this provision but in all of them, and in all states which have any statutes upon the subject, they are strictly construed.

With kindest personal regards, I am