

Opinion No. 37-1816

November 15, 1937

BY: FRANK H. PATTON, Attorney General,

TO: Honorable J. O. Gallegos State Comptroller Santa Fe, New Mexico. Attention: C. R. Sebastian, First Assistant State Comptroller

{*190} This will acknowledge receipt of your letter dated November 13, wherein you inquire whether or not the Boards of County Commissioners of the several counties may allow a per diem reimbursement to county officers for lodging and subsistence when traveling on official business away from their designated place of duties.

In addition to their regular statutory mileage or actual transportation expense, such county officers may, when traveling on official business within the state, be allowed a per diem in lieu of lodging and subsistence in such daily sum as may be approved by the State Comptroller, such daily sum in any event not to exceed \$ 5.00 per day. Chapter 11, Laws of 1937.

If such county officers travel within the State on a basis other than a per diem basis, then in addition to their statutory mileage or actual transportation expense, they may be reimbursed the expenses actually incurred and paid for lodging and subsistence, subject only to such rules and regulations as may be promulgated by the State Comptroller with reference thereto, pursuant to Chapter 11, Laws of 1937.

If such county officers are traveling outside of the state on official business and such out of state travel has been first approved by the Governor in writing, then, in addition to their statutory mileage or actual transportation expense, they may be allowed such sum daily for lodging and subsistence as may be approved by the Governor in writing, subject further to such rules and regulations as may be promulgated by the State Comptroller with reference thereto, pursuant to Chapter 11, Laws of 1937.

In your letter you inquire whether a County Sheriff must first obtain permission of the Governor whenever it is necessary to cross into another state in pursuit of criminals. Ordinarily these matters are covered by our extradition statutes and when the Governor approves the application for requisition of a fugitive from justice, he has clearly approved the out of state travel. However, you probably have in mind cases which may arise in border counties where a sheriff might, in hot pursuit, follow a fugitive across the state line for assistance in his immediate apprehension. In such cases, naturally, the sheriff could not conveniently stop his pursuit and first obtain written permission from the Governor for the out of state travel for the purpose of reimbursement. Such an emergency should be considered an exception by reason of necessity from the provisions of Chapter 11, Laws of 1937, pertaining to out of state travel. No doubt, approval in writing by the Governor of payment or reimbursement for lodging and subsistence after the sheriff's return to the state should be sufficient. Such cases arise

very infrequently, but when they do, every doubt should be resolved in favor of allowing reimbursement to such officers.

Trusting that the foregoing sufficiently answers your inquiries, I am

By: FRED J. FEDERICI,

Asst. Atty. Gen.