

**Opinion No. 45-4708**

May 8, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Hon. James B. McGhee District Judge Roswell, New Mexico

{\*60} I have before me your letter of May 3, 1945 together with copy of your letter to Mr. Sebastian, in connection with House Bill No. 196.

It appears to me that Mr. Sebastian's letter is quite correct although the language he uses undoubtedly led to confusion. His position is this:

Under our various budget requirements (Sections 15-4801 to 15-4807 of the 1941 Compilation applying to counties) it is made unlawful to pay any sum in excess of the item in the budget for such purpose. Thus, if \$ 2100.00 were budgeted for the clerk of the court, the clerk could not be paid on the basis of \$ 2625.00 until a new budget became effective.

However, your attention is directed to Section 7-120 of the 1941 Compilation which empowers the Comptroller {\*61} to revise the budget of any county if any emergency arises. It appears to me that this section could be invoked and a budget transfer be made from the court fund or any county fund in which there might be a surplus to the county salary fund, so that the clerks of the district courts could be immediately given their increases.

There is another possible method of giving the district court clerks their increases immediately. You, as district judge, are given very wide latitude under Section 16-314 of the 1941 Compilation in the expenditure of the court fund. It is my opinion that if you deemed it necessary for the proper administration of your court to pay the clerks of the court a sum in addition to their salary as budgeted, that you could do so out of your court fund. I am, of course, assuming that you have an item such as "contingent expense" in your court fund budget, broad enough to cover such payment.

You will find enclosed copy of Opinion No. 3383 regarding this matter.

By ROBERT W. WARD,

Asst. Atty. General