

Opinion No. 53-5696

March 10, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Edward M. Hartman State Comptroller Santa Fe, New Mexico

{*88} In your letter dated March 2, 1953, you state that the Assistant District Attorney for Los Alamos County receives a nominal salary of \$ 1.00 per year but that he also acts as county attorney and is being paid a monthly salary from the General County Fund of \$ 250.00. You and the County Commissioners desire to know whether this payment of salary from the County Fund is permissible.

The district attorneys by law, together with their assistants, are required to represent the various counties and the State in all matters pertaining to such counties and, under ordinary circumstances, all compensation paid to assistant district attorneys would have to come out of the monies appropriated for that purpose and the counties would not be authorized to pay an additional amount to an assistant district attorney from their general funds.

However, Los Alamos County is a sixth class county and as such, by virtue of Section 15-4128, NMSA 1941 p. s., this county is empowered to enact ordinances in addition to other powers granted to counties generally and, to that extent, Los Alamos County is given some of the characteristics of a municipality. Since the district attorney is not required to prosecute persons who violate municipal ordinances, it would seem that the County of Los Alamos, in its capacity as a municipality, would be authorized to employ a special prosecutor, whether he be called a county attorney or by some other name. This authority is implied in Section 15-4136, NMSA 1941 p. s., in making it the duty of peace officers to cooperate with the assistant district attorney **or other prosecutor if any** in all reasonable ways.

It is therefore the opinion of this office that the payment from the County General Fund of a monthly salary to a county prosecutor in Los Alamos County is permissible, subject to budget limitations.

By: C. C. McCulloh

Assist. Attorney General