

**Opinion No. 53-5830**

October 27, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

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

{\*241} This is in answer to your request for an opinion upon whether District Judges, in making mileage allowances from the District Court Fund, would be governed by the amount prescribed by the State Board of Finance or by § 10-408, N.M.S.A., 1941 Comp., as amended.

§ 10-408, N.M.S.A., 1941 Comp., as amended, reads as follows:

"10-408. MILEAGE ALLOWANCES FOR USE OF PRIVATELY OWNED CONVEYANCES. -- The maximum rate of mileage allowed and paid from public funds for the use of privately owned conveyances on official business chargeable against the State of New Mexico of any county, school district, or municipality thereof shall be seven (7 [cents]) cents per mile, provided, however, that this act (section) shall not apply to school busses; provided further, that the sheriffs, deputy sheriffs and other peace officers of the several counties of this state shall be paid mileage at the rate of nine cents (9 [cents]) per mile, for the distance actually and necessarily traveled in serving any warrants, process, order, citation, summons, jury venire, or decree of any courts now provided by law, or in the performance of any official business: that is, serving any jury venire mileage shall only be charged once to the farthest point actually traveled in serving venire. (Laws 1935, ch. 81, § 1, p. 189; 1937, ch. 82, § 1, p. 199; 1947, ch. 14, § 1.)"

Section 11, Chapter 156, Laws of 1953, which supersedes § 12, Chapter 227, Laws of 1951, provides as follows:

"Section 11. . . . No officer or employee of the state shall be allowed or paid any sum for transportation, lodging or subsistence, except when traveling away from his designated post of duty on official business, nor in excess of necessary traveling expense actually incurred and paid; except that state officers and department heads may allow in lieu of actual expenses for lodging a subsistence sum not to exceed ten dollars (\$ 10.00) per day, the rate allowed being at the discretion of the State Board of Finance. The maximum rate which may be allowed for travel on privately' owned cars shall be ten cents (10 [cents]) per mile. Any state officer or department head authorizing the use of a privately owned car shall file such written authorization with the State Auditor prior to submitting vouchers in payment of such use.

"Out of state travel must be authorized by the Governor in writing before such travel is incurred, such approval being on regular forms prescribed by the State Comptroller. The

rate of per diem or expense allowance and method of transportation for out of state travel shall be at the discretion of the Governor."

Section 11, Chapter 156, Laws of 1953, supersedes § 10-408, N.M.S.A., 1941 Comp., Laws 1947, Chapter 14, § 1, in all respects wherein these two {242} sections of the law are in conflict. § 11, Chapter 156, Laws of 1953, clearly applies to the state officers and employees of the state, whereas Laws of 1947, Chapter 14, § 1, applies to state, county, school district or municipalities. District Judges are officers of the State. State ex rel. Ulrick v. Sanchez, 32 N.M. 265.

In addition to the above cited statutes, § 16-325, N.M.S.A., 1941 Comp., as amended, Laws 1913, Chapter 17, § 1, specifically provides for the actual and necessary traveling expenses of District Judges and the reimbursement from the District Court Fund.

"§ 16-325. TRAVELING EXPENSES OF JUDGE -- REIMBURSEMENT FROM COURT FUND. -- The district judges shall be reimbursed their actual and necessary traveling expenses, hotel bills and other necessary incidental expenses, incurred while absent from their district headquarters upon official business, such expenses to be paid from the court fund of the county for which such business is transacted, upon itemized expense accounts filed with the clerk of the court for such county. (Laws 1913, ch. 17 § 1; Code 1915, § 1374; C.S. 1929. § 34-313.)"

Therefore, in answer to your request, it would appear clearly that Laws of 1951, Chapter 227, § 12, has been superseded by Laws of 1953, Chapter 156, § 11, which in substance raised the rate per mile from 7 [cents] per mile to 10 [cents] per mile as the maximum rate to be allowed by travel by privately owned cars. As to actual and necessary traveling expenses, § 16-325, N.M.S.A., 1941 Comp., as amended, would govern the expenditures of District Judges for their actual and necessary traveling expenses not in conflict with Laws of 1953, Chapter 156, § 11.

It is, therefore, the opinion of this office that District Judges may allow compensation for actual and necessary traveling expenses, or in lieu thereof, per diem as authorized by the State Board of Finance not in excess of \$ 10.00 per day, and in relation to mileage allowances by privately owned conveyances, District Judges may authorize not in excess of 10 [cents] per mile without any authorization of the State Board of Finance.

By: William J. Torrington

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