

Opinion No. 54-5974

June 17, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. J. C. Enloe District Attorney Seventh Judicial District Socorro, New Mexico

{*432} Receipt is acknowledged of your letter dated June 8 in which you request an opinion as to whether upon the discharge of his deputy by the County Clerk is the County bound to pay such discharged deputy for the entire month in which she was discharged or only for the actual days she served as deputy during such month.

The pertinent statutes on your question are § 15-4121, N.M.S.A., 1941 Comp. which reads as follows:

"Payment of salaries and expenses. -- Except as hereinbefore and hereinafter otherwise provided, the salaries of all county officers and the salaries of deputies, as fixed by law, and the expenses, as fixed by law, shall be paid monthly out of the county salary fund, upon warrants drawn by the county commissioners, and shall be paid from the respective dates upon which the several county officers qualified.

Provided, that salaries of county superintendents of schools shall likewise be paid monthly out of the general school fund of the respective counties."

Section 15-4112, N.M.S.A., 1941 Comp., which reads as follows:

"No compensation except as provided by law. -- No county officer shall accept or receive to his own use, or for or on account of any deputy or deputies, clerk or clerks appointed by him or employed in his office, or for or on account of expenses incurred by him of (or) by any such deputy or deputies, clerk or clerks, or for or on account of his office, any salary, compensation, allowance, fees or emoluments in any form whatsoever, other than authorized by law."

Section 41-812, N.M.S.A., 1941 Comp., p.s., which reads as follows:

"Receiving payment from public money for personal services not rendered -- Receipt or disbursement of payments -- Penalty. -- Except in the case of payments covering lawful vacation periods and absences from employment {*433} because of sickness, any person who receives payment, or any person who makes payment or causes payment to be made from public money where such payment purports to be for wages, salary, or other return for personal services and where such personal services have not in fact been rendered, shall be guilty of a felony and shall be punished by a fine of not less than one thousand dollars (\$ 1,000.00) nor more than five thousand dollars (\$ 5,000.00) or by imprisonment for not less than one (1) year nor more than two (2) years, or by both such fine and imprisonment."

The first section provides for the payment to county officials on a monthly basis. The second section, which is § 15-4112, N.M.S.A., 1941 Comp., prohibits the acceptance or receipt for or on account of any deputy or clerk appointed by him or employed in his office, except as authorized by law. The last statute makes it a felony for any person to make payment or receive payment for wages, salary or personal service not rendered and provides a penalty.

We are informed that it is the custom in the various counties to allow two weeks annual vacation to each employee. In your case, if this employee has not taken her annual leave, she would be entitled to be paid for her annual leave not taken or used on the date of her discharge.

However, the payment of wages or salary would stop on the day she was discharged and in this case she would not be allowed to be paid for the entire month, only for the actual days she served as deputy during her last month.

In view of our interpretation of the above quoted statutes and the custom followed in the past, it is the opinion of this office that the discharged deputy county clerk is not entitled to be paid for the entire month, only for the actual days she served and worked as deputy during her last month of employment with the County of Socorro as such deputy clerk, plus any earned vacation pay to which she is entitled since the first of the year.

Trusting that this fully answers your inquiry, I remain

By: Hilario Rubio

Assist. Attorney General