

Opinion No. 55-6274

September 6, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. C. Chase, Jr., District Attorney, Las Cruces, New Mexico

It is my understanding from your letter of July 25 that you seek my opinion on whether the County Commissioners can authorize and pay extra secretarial help necessitated in your office in connection with bringing condemnation proceedings for highways, and whether the payment, if for services in connection with federal aid primary roads, is reimbursable from the State Highway Commission under Chapter 278, Laws of 1955.

Section 17-1-5, N.M.S.A., 1953, provides:

"The salaries of all district attorneys, assistant district attorneys, **and other personnel for the district attorneys** shall be paid by the state out of funds appropriated from the state general fund for such salaries and the amounts remitted by the various counties for such purpose. Such salaries shall be paid monthly, upon warrants drawn by the state auditor upon the state treasurer. Such salaries shall date from the time when said officers are qualified, and from the time when such other personnel begin their duties."

It would appear, therefore, that if you employed a stenographer she would be "personnel for the district attorney" within the meaning of § 17-1-5 and a salary could only be paid her out of the state general fund appropriated for that purpose or out of the amount remitted by the counties for that purpose.

There is little doubt but that the duty of acquiring rights of way for state highways rests upon the County Commissioners and that the district attorney is required to bring the condemnation if necessary. Section 55-2-28, N.M.S.A., 1953, and Attorney General Opinion 5679. If the district attorney cannot bring the proceedings for lack of secretarial help or for any other reason, it may be the obligation of the County to look else-where for these services.

Although generally a county has no authority to employ others to perform acts which are part of the official duties imposed by statute upon another officer (20 C.J.S. 1014, and *Fancher v. County Commissioners*, 28 N.M. 179), both by statute and generally it appears it can employ counsel other than the district attorney. 20 C.J.S. 1016 and § 17-1-12, N.M.S.A., 1953.

This section reads as follows:

"No one shall represent the state or any county thereof in any manner in which said state or county is interested except the attorney general, his legally appointed and qualified assistants or the district attorney or his legally appointed or qualified

assistants, and such associated counsel as may appear on order of the court, with the consent of the attorney general or district attorney."

Under this statute I believe the county could pay for the services of associate counsel, and probably necessary secretarial help for him. To construe § 17-1-5, and § 17-1-12, consistently, such associate counsel and secretary should not be "personnel for the district attorneys," or their salaries must come from the state general funds or those remitted by the counties and anticipated by your budget. Actually the work would probably only be occasional and payment would be in the form of fees rather than salary.

The next question is whether payment for such services would be reimbursable from the state road fund by virtue of Chapter 287, Laws of 1955, which requires an appraisal of the cost of obtaining the right of way and reimbursement by the state to the county of its actual expense, but not to exceed the appraised figure. If it is a necessary expense of acquiring the right of way, I believe it is reimbursable, and should be appraised, although I foresee difficulties in making the appraisal.

I do not mean to suggest by this letter that in order for you to secure the additional secretarial help you need that the county must employ associate counsel, but we have been informed by the Highway Commission that in other counties the problem has arisen with respect to legal services as well, and we fail to see how additional personnel in your office could be paid other than as provided in § 17-1-5.

Of course, a court order must be obtained pursuant to § 17-1-12 before associate counsel can be employed, and since the state is an interested party in the matter, it might be well to obtain my consent in order to eliminate the possibility of obtaining assistance from this office.