

Opinion No. 56-6555

December 4, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: H. R. Swenson, Warden, Penitentiary of New Mexico, P. O. Box 1059, Santa Fe, New Mexico

You have asked for our opinion as to whether or not the Penitentiary may legally pay a claim submitted by Mr. Jose A. Vigil. The claims which Mr. Vigil has submitted to you are for Mr. Vigil's expenses which were incurred by him at the time that two Penitentiary inmates escaped from the Penitentiary taking Mr. Vigil, a prison guard, and his automobile into the southeastern part of the State. Mr. Vigil has listed the following items in his claim:

Personal Money \$ 25.00

Gasoline (used in returning) 6.12

Room (used when released
from Prisoners) 4.50

Gasoline (used
during escape flight) 6.12

Mileage (600 at .08 a
mile) 48.00

Borrowed money from
sheriff 4.00

Oil (used during escape
flight) .55

It is my opinion that none of the above items may be legally paid by the State Penitentiary. The Penitentiary in no manner whatever authorized the use of Mr. Vigil's car nor the expenditure of funds by Mr. Vigil while he was away from his post of duty.

Although I sympathize with Mr. Vigil's situation, it must be pointed out that such circumstances as these are hazards of a prison guard's employment and something which the Penitentiary, under the present statutes, is not allowed to reimburse. In this respect, a guard of the Penitentiary is in no different position than a private individual who might be put in the same position by escaped inmates and forced to lend his automobile to them, and also use his personal funds to purchase bile, and expend funds to pay for gasoline and oil for that automolodging and eating expenses while under the

forcible control of the escapees. Certainly a private citizen could not claim reimbursement from the Penitentiary for these items of expense.

I trust the above answers your inquiry.

By Santiago E. Campos

Assistant Attorney General