

**Opinion No. 59-98**

August 12, 1959

**BY:** HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Raymond E. Keithly District Attorney Seventh Judicial District Truth or Consequences, New Mexico

{\*156} This is written in reply to your recent request for an opinion on the following questions:

1. Is the Attorney General obligated, under Ch. 45, Laws 1959, to defend a sheriff in a civil action arising from his official conduct in office?
2. Does the District Attorney have to defend a sheriff in a civil action arising from his official conduct in office?

In answer to your questions, it is my opinion that:

1. No.
2. No.

Section 1, Ch. 45, Laws 1959, provides as follows:

"The attorney general of New Mexico is directed to act, if requested, as attorney for any **officer, deputy, assistant, agent or employee of the State or of a state institution** in the event such person is named {\*157} as a party in any civil action in connection with an act growing out of the performance of his duty; . . ." (Emphasis Supplied)

The emphasized portion of the above section limits the persons the Attorney General is to represent to State employees, etc., and employees of State institutions. It is clear that a sheriff is a county official, as distinguished from a State official or employee, and therefore, it is equally clear that the Attorney General's office is not under an obligation to represent a sheriff in such a situation as you pose.

The duties of the District Attorneys in this State are set forth in Section 17-1-11, N.M.S.A., 1953 Compilation. An examination of this statute leads me to the conclusion that District Attorneys are not required to defend sheriffs in civil suits. Their duties are limited solely to representing the interests of the State in criminal and civil actions.