Opinion No. 62-84

July 10, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General L. D. Harris, Assistant Attorney General

TO: Mr. K. D. Spiller, Chief, Budget and Financial Control, Department of Finance and Administration, Santa Fe, New Mexico

QUESTION

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1. When sheriffs, deputy sheriffs and other peace officer of the several counties are authorized private car reimbursement relative to transportation and extradition of prisoners and payable from the transportation and extradition of prisoners fund, is such reimbursement limited to 7 cents per mile?

2. In the event of an affirmative answer to the previous question, must recovery be instituted for the excessive 2 cents per mile payments issued against such claims arising from costs incurred relative to the transportation and extradition of prisoners since the effective date of Chapter 253, Laws 1961?

CONCLUSION

1. No.

2. Not applicable.

OPINION

According to your letter, the Department of Finance had regarded as mandatory the provision in Section 5-4-8, supra, prior to the amendment, that the sheriffs shall receive 9 cents per mile.

Research has indicated that in the past there has been some apparent conflict between what we shall designate as a general statute applicable to mileage received by the sheriffs and deputies in their ordinary course of business and that amount which is received as mileage when the sheriffs or deputies are engaged in the extradition and transportation of prisoners. We refer you to **State vs. Velarde,** 39 N.M. 179, 43 P. 2d 377. In that case the Supreme Court held the reimbursement of expenses for transportation of prisoners to be controlled by the maximum as provided in Chapter 186 of the Laws of 1933, the General Appropriation Act of that session of the legislature.

However, we do not feel it necessary to decide whether you should presently proceed under Section 5-4-8, supra, or under Chapter 254, Section 19, Laws of New Mexico 1961, General Appropriations Act, because your directive BFC 50-2, July 27, 1961 establishes the mileage reimbursement at 9 cents per mile for use of personal vehicle in the extradition and transportation of prisoners. This directive established a payment for the sheriffs and deputies that is within the maximum provided in Section 5-4-8, being 9 cents, and the maximum that is provided in Chapter 254, Section 19, being 10 cents per mile.

The funds which the Board of Finance disburses for the extradition and transportation of prisoners have been appropriated by the legislature, and it seems quite logical that Section 19 of the 1961 Appropriations Act would be applicable. We notice, however, that Section 19 refers to officers and employees of the state. We further notice in reviewing Chapter 253, Laws of 1961, that the legislature in several sections mentions that sheriffs, deputies and guards shall be paid per diem expenses at the same rate as state employees. As it is quite obvious that the legislature does not classify sheriffs, deputies and guards as state employees, then the question arises as to whether Section 19 would properly apply to them. As stated above, we do not believe it necessary to answer your question to determine whether Section 19 applies or Section 5-4-8, supra, for the reason that the significant aspect of the problem is that your directive BFC 50-2 is within the maximum allowed by both sections. As your directive specifically covered the extradition and transportation of prisoners and, according to our information it is still in force and effect, it would prevail over the Board's establishing a 7 cents a mile maximum for private car usage by officers and employees of the state in general. We note again what has been said heretofore about sheriffs, deputies and guards not being state employees within the contemplation of the legislature.

Therefore, the Department of Finance should allow 9 cents per mile for the use of privately owned vehicles by peace officers in extraditing and transporting prisoners, as the 7 cents per mile is not applicable.