

## Opinion No. 63-140

October 23, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** Mr. Reuben E. Nieves Assistant District Attorney Ninth Judicial District Clovis, New Mexico

### QUESTION

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1. Under § 31-3-5.4, N.M.S.A., 1953 Compilation (P.S.), is each appraiser permitted to charge separate mileage reimbursement when both appraisers go out to view property in the same vehicle?
2. Would each appraiser be permitted to charge separate mileage if they go out to view property in separate vehicles?
3. Would the appraisers be required to go together in one vehicle and make one charge for mileage if they are viewing the same property?

#### CONCLUSION

1. No.
2. See Analysis.
3. See Analysis.

### OPINION

#### {\*311} ANALYSIS

The language of the statutory section providing compensation for appraisers is important in answering your question, and we therefore quote it in toto:

"31-3-5.4 **Appraisers-Compensation.** -- Compensation and expenses of appraisal are a part of the cost of administration and shall be paid out of the estate. Each appraiser shall receive compensation at the rate of ten dollars (\$ 10.00) a day, not to exceed five (5) days and mileage **reimbursement** at the same rate as established for state employees, while necessarily engaged in the performance of duty. **Other necessary** expenses incurred in the performance of duty shall be paid in amounts determined by the court. (Emphasis supplied)

The prior law governing compensation for appraisers provided that they should receive \$ 5.00 per day, not to exceed \$ 25.00 and other expenses that might be necessary. In Attorney General's Opinion No. 3402, 1939-40, this office said that the determination of what expenses were necessary was solely within the discretion of the Court. Although we feel that the new statute establishes a certain rate for mileage reimbursement, we feel that the expense still must be necessary. In this connection we note that the new statute, after mentioning mileage reimbursement, refers to "other necessary" expenses. We think this indicates a legislative intention that the mileage expense should be necessary before reimbursement is available.

The statute also specifically uses the word "reimbursement," which would apply only to the owner or driver of the private vehicle involved. If more than one appraiser travels in one private vehicle, we are of the opinion that mileage payment to more than one appraiser is not a "necessary expense" within the requirements of § 31-3-5.4.

We note also that § 5-10-3, N.M.S.A., {312} 1953 Compilation (P.S.), although it probably does not apply to appraisers, specifically states that only one State officer may receive mileage for each mile traveled in a single privately owned vehicle. (With respect to peace officers, a similar requirement appears in § 15-40-21.1, N.M.S.A., 1953 Compilation (P.S.)). We think it was the intention of the legislature that this same requirement should also apply to appraisers. The answer to your first question, therefore, is No.

Turning to your second question, we again refer to our conclusion that the mileage expense should be necessary before an appraiser is entitled to compensation. Therefore, if it is necessary that appraisers take separate conveyances to view the property, each appraiser is entitled to mileage reimbursement. The determination of necessity would be made by the Court. See Attorney General's Opinion No. 3402, 1939-40.

The Succession Tax Division of the Bureau of Revenue has informed us that the Bureau contemplates that more than one appraiser should view the property of each estate. We think, however, that the rule of necessity would again apply. If it is necessary that more than one vehicle be taken in order to view the property, then mileage reimbursement should be allowed for each separate vehicle. We feel that although mileage reimbursement is now set by statute, the Court still has supervision over the necessity of expenses.

By: Wayne C. Wolf

Assistant Attorney General