

Opinion No. 63-96

August 9, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Honorable Frank B. Zinn District Judge Eleventh Judicial District Gallup, New Mexico

QUESTION

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1. Do the provisions for travel expense reimbursement set forth in the 1963 Per Diem and Mileage Act apply to District Judges and their reporters and interpreters?
2. Does the provision in the 1963 General Appropriations Act (Laws 1963, Chapter 287, Section 18) relative to travel expense reimbursement for public officers repeal by implication the older statutes governing such reimbursement for District Judges and their reporters and interpreters?
3. Is it now required under Section 11-2-70 that District Judges and their reporters and interpreters attach receipts, as opposed to itemized expense accounts, to vouchers for the reimbursement of actual and necessary travel expenses?

CONCLUSIONS

1. No.
2. No.
3. No.

OPINION

{*208} ANALYSIS

Chapter 31, Laws 1963, designated as the Per Diem and Mileage Act, provides that "Any officer **covered by this act**, shall receive twenty dollars (\$ 20.00) as per diem expense for each day spent in the discharge of official duties and eight cents (\$.08) a mile for each mile traveled in a privately owned vehicle, if the travel is necessary to the discharge of his official duties." (Emphasis ours). The Per Diem and Mileage Act also provides that nothing in the Act "shall be construed to apply the rates or conditions specified in it to the reimbursement of any state officer, unless this is accomplished **by specific statutory reference to the Per Diem and Mileage Act.**" (Emphasis Added).

There has been no legislation enacted providing that District Judges shall receive per diem and mileage as set forth in the Per Diem and Mileage Act. As yet the Per Diem and Mileage Act has been made applicable only to members of certain boards, agencies and commissions. Chapter 43, Laws 1963. Thus we answer your first question in the negative.

Your second question asks whether a provision in the 1963 General Appropriation Act relative to per diem and mileage for public officers repeals by implication Sections 16-3-33 and 16-3-47 N.M.S.A., 1953 Compilation, which provide for travel expense reimbursement for District Judges and their reporters and interpreters.

The provision in the General Appropriation Act which is here {**209*} pertinent is Section 18, reading as follows:

"The state board of finance shall allow in lieu of actual expenses of subsistence and lodging for official travel of public officers and employees an amount not to exceed \$ 10.00 per diem for travel within the state. The rate of per diem or expense allowable for out-of-state travel shall be at the discretion of the governor but not to exceed \$ 20.00 per diem. The state board of finance shall allow a mileage rate for travel by privately owned automobiles in an amount not to exceed ten cents (\$.10) per mile."

Section 16-3-33, N.M.S.A., 1953 Compilation, an earlier statute dealing with travel expense reimbursement for District Judges, provides:

"The district judges shall be reimbursed their actual and necessary traveling expenses, hotel bills and other necessary incidental expenses, incurred while absent from their district headquarters upon official business, such expenses to be paid from the Court fund of the county for which such business is transacted, upon itemized expense accounts filed with the clerk of the court for such county."

Section 16-3-47, N.M.S.A., 1953 Compilation, contains substantially the same provisions for reimbursement of the District Judges' reporters and interpreters.

It is a fundamental rule of statutory construction that repeals by implication are not favored. It is also a well-recognized canon of statutory construction that:

"A subsequent statute, treating a subject in general terms, will not be held to repeal by implication an earlier statute treating the same subject specially, unless such construction is absolutely necessary in order to give the subsequent statute effect."
Levers v. Houston, 49 N.M. 169, 159 P.2d 761.

See also the following New Mexico cases:

State v. Spahr, 64 N.M. 396, 328 P. 2d 1093; **Varney v. City of Albuquerque**, 40 N.M. 90, 55, P. 2d 40; **State v. Romero**, 19 N.M. 1, 140 Pac. 1069.

Our Supreme Court has just recently reiterated this principle in the case of **State v. Rue**, Docket No. 7146, filed June 28, 1963, wherein our highest Court said:

"When two statutes are enacted by the legislature covering the same subject matter, one of them in general terms and the other in a more detailed way, the two should be harmonized, if possible, and construed together."

In our opinion this rule of statutory construction is applicable in the situation here involved. We have a specific statute providing for travel expense reimbursement for District Judges (as well as for their reporters and interpreters). We also have a later general enactment treating the matter of travel expense reimbursement of public officers.

As the Court stated in **State of New Mexico v. United States**, 148 F. Supp. 508, 513:

"Where there are two statutes {**210*} upon the same subject, the earlier being special and the later general, unless there is an express repeal or an absolute incompatibility, the presumption is that the special is intended to remain in force as an exception to the general. Here, there was no express repeal and there is no absolute incompatibility, for both statutes can be given reasonable operation by the application of such presumption."

The same thing is true here. Obviously there was no express repeal of the specific statutes (Sections 16-3-33 and 16-3-47, *supra*) and repeals by implication not being favored, the strong showing of a legislative intention that the general statute supersedes the specific statutes is lacking. **Hoffner v. Director of Public Safety of Lawrence**, Mass., 110 N.E. 2d 369; **Maxwell on Interpretation of Statutes**, P. 156 (1937); **50 Am. Jur., Statutes**, Sections 561, 562.

To hold that all existing specific statutes relating to travel expense reimbursement for certain enumerated public officers were repealed by implication by the provision in the General Appropriation Act would also mean that the Per Diem and Mileage Act, applicable to various board members and also enacted during the 1963 legislative session, was repealed by implication since the Appropriation Act was the later statute. No such legislative intent is discernible. See also Chapter 115, Laws 1963.

Based upon the authorities cited herein, it is our conclusion that District Judges, as well as their reporters and interpreters, may, under the specific provisions of Sections 16-3-33 and 16-3-47, *supra*, continue to be reimbursed for their actual and necessary travel expenses.

Our answer to your third question is based primarily upon the same lines of authority discussed heretofore, i.e., (a) repeals by implication not favored and (b) general versus specific statutes, and thus our answer is "no". District Judges may continue to file itemized expense accounts with the appropriate clerk of the court.

By: Oliver E. Payne

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