

## Opinion No. 66-106

August 26, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General James V. Noble, Assistant Attorney General

**TO:** Morris Stagner, District Attorney, Ninth Judicial District, County Courthouse, Clovis, New Mexico

### QUESTION

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What salary, if any, should be paid guards or jailers of a county which has been newly classified as "C" or "B" class under the provisions of Section 15-43-1, N.M.S.A., 1953 Compilation (P.S.)?

#### CONCLUSION

The salary paid should be that provided for in Section 15-43-13, N.M.S.A., 1953 Compilation, for a jailer or guard in a First or Second Class County.

### OPINION

#### {\*143} ANALYSIS

The New Mexico Legislature in 1952 enacted chapter 196, (Section 15-43-1, et seq. N.M.S.A., 1953 Compilation (P.S.)). The title of the act was:

"An Act relating to salaries of County officers; providing classification of counties for salary purposes; repealing sections . . .".

Section 15-43-1, supra, reads, insofar as pertinent, as follows:

"Classification for Salary Purposes. -- For the purpose of fixing salaries of county officers, the several counties of the state except "H" class counties are hereby classified as follows:

.. as class "A" counties.

.. as class "B" counties.

.. as class "C" counties.

.. as counties of the first class.

.. as counties of the second class.

.. as counties of the third class.

.. as counties of the fourth class.

.. as counties of the fifth class.

Subsequent sections call for the biennial determination of classification and establish salaries for various **county officers** based upon the classification of the county.

Prior to the enactment of Section 15-43-1, supra, Laws of 1915, Chapter 12, Section one, as amended, (Section 15-43-1, et seq., N.M.S.A., 1953 Compilation (Parent Volume), determined county classification for such purposes but made no provision for class "B" or class "C" counties.

The 1957 act, supra, did not specifically repeal Section 15-43-13, N.M.S.A., 1953 Compilation, which provided for the salaries of jailers and guards, and repeals by implication are not favored. **State vs. Valdez**, 59 N.M. 112, 279, P.2d 868.

We held in Opinion No. 60-222, Report of the Attorney General, 1959-60 that jailers and guards were county employees and not county officers. There is, therefore, no compelling necessity for holding that the language of chapter 196, Section 1, supra, repealed the provisions of Section 15-43-13, supra, which provided in pertinent part:

"The compensation of county jailers shall be as follows:

For day jailers in counties of the first and second classes, not to exceed twenty-four hundred dollars (\$ 2,400.00) per annum.

For night jailers in counties of the first and second classes not to exceed eighteen hundred dollars (\$ 1,800.00) per annum . . .".

{\*144} As above shown, at the time of the passage of the compensation statute for jailers, there were no class "C" or class "B" counties.

It cannot be presumed, in the absence of clear intent appearing, that the legislature intended to abolish the office of jailers and guards in counties of "B" class or "C" class. It likewise cannot be presumed that the legislature intended such employees to serve without compensation. Such being the case the legislature either overlooked the question of the amount of salary to be paid to jailers and guards in class "B" and class "C" counties, if intended to be higher than first and second class counties, or intended that the salary should remain the same even though the county classification for certain other purposes was changed. In either case the result is the same. Until the legislature indicates that the salary should be increased or that the position of jailers and guards in class "B" and "C" counties are abolished, or that they serve without compensation, the

salaries of jailers and guards must remain within the limits designated by Section 15-43-13, supra, for jailers and guards of counties of the first and second class.