

## **Opinion No. 66-115**

October 18, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Donald W. Miller, Assistant Attorney General

**TO:** Mr. Luis L. Fernandez, Chief, Local Government Division, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

Is it the responsibility of the State or the County to pay for transportation costs incurred when a prisoner is transported from the State prison to the County jail for the purpose of collaterally attacking his conviction under Rule 93 of the New Mexico Rules of Civil Procedure?

#### CONCLUSION

See analysis.

### **OPINION**

#### {\*157} ANALYSIS

The pertinent statute in answering your question is Section 15-43-11.1, N.M.S.A., 1953 Compilation (P.S.). It states, in pertinent part:

"Sheriffs, deputy sheriffs and guards -- Expenses incurred in serving process and certain other official business -- Per diem. -- A. Sheriffs, their deputies and guards shall be paid per diem expenses, at the same rate as state employees, by the counties on behalf of which expenses are incurred."

"C. Sheriffs, their deputies and guards shall be paid per diem expenses, at the same rate as state employees, for transporting prisoners to the penitentiary and extraditing prisoners from without the state. These per diem expenses shall be paid by the state upon sworn accounts filed with the department of finance and administration."

The General Appropriation Act, establishes a fund of \$ 50,000 for transporting and extraditing prisoners. While Section 15-43-11.1, N.M.S.A., 1953 Compilation, deals only with transportation of prisoners to the penitentiary, the General Appropriations Act makes no such limitation on the expenditure of state funds for transporting prisoners to and from the county jail. It is therefore our opinion that it is consistent with the intention

of the legislature to pay the cost of transporting prisoners to and from rule 93 hearings from the above mentioned fund.