

Opinion No. 68-120

December 16, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Luis L. Fernandez, Chief Local Government Division Department of Finance & Administration Legislative-Executive Building Santa Fe, New Mexico

QUESTIONS

Does Section 19 of Chapter 2, Laws 1967 (Appropriations Act), as carried forward by Section 11, Chapter 71, Laws 1968, concerning per diem and mileage supersede the per diem and mileage provision of Section 17-1-3, N.M.S.A., 1953 Compilation (P.S.) insofar as district attorneys and other personnel are concerned?

CONCLUSION

No.

OPINION

{*195} ANALYSIS

Section 17-1-3(A), N.M.S.A., 1953 Compilation (P.S.) reads as follows:

The actual traveling expenses, by common carrier or personal automobile, shall be paid for on the basis of transportation costs by common carrier and at the rate of nine cents (\$.09) per mile for travel by personally owned vehicle, and subsistence in lieu of actual expenses shall be paid to the district attorneys and other personnel at the rate of eight dollars (\$ 8.00) per diem, or actual expenses, while in the discharge of their duties, provided that per diem in lieu of subsistence shall not be allowed while such district attorneys and their assistants and other personnel are performing duties within a radius of twenty [20] miles of their respective official duty stations. Such expenses incurred while in the discharge of their duties shall be paid by the counties in behalf of which the same are incurred, out of the court fund of each county when supported [by] sworn statements of such expenses, and approved by order of the court.

Chapter 2, Laws 1967, was the Appropriations Act. Section 19 reads 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 twenty dollars (\$ 20.00) per diem for travel within the state. The board shall allow a rate of per diem or expense allowance for out-of-state travel not to exceed twenty-five dollars (\$ 25.00) per diem. The board shall allow a mileage rate for travel by privately

owned automobiles in an amount not to exceed ten cents (\$.10) per mile and for travel by privately owned aircraft in an amount not to exceed fifteen cents (\$.15) per air mile.

No similar specific provision was made in Chapter 71, Laws 1968, which was the Appropriations Act for such year. Section 11 of that Act provided, however, that the same extensions, provisions and limitations as were contained in the 1967 Appropriations Act, as modified or changed by the 1968 Act, were continued for subsequent fiscal years. As stated, there was no change or modification in the 1968 Act and thus the provisions of Section 19 were carried forward.

In Opinion No. 65-179, Report of the Attorney General, 1965, p. 294, we considered the effect of a similar provision in the Appropriations Act and those of the Per Diem and Mileage Act (Sections 5-10-1, et seq., N.M.S.A., 1953 Comp.) The Per Diem and Mileage Act set per diem and mileage for state officers including those serving on state boards and commissions. We there held that the provisions of the Appropriations Act controlled insofar as public officers and employees are concerned, but that the provisions of the Per Diem and Mileage Act, being more specific applied to travel of non-salaried board and commission members, citing **State v. Spahr**, 64 N.M. 395, 328 P.2d 1093.

The provisions of Section 17-1-3(A), supra, deal specifically with reimbursement of the District Attorney and personnel of the office of the District Attorney. The provisions of Section 19 of the Appropriations Act deal with reimbursement of the expenses of public officers and employees and control as to these. Although a district attorney may be a public officer and personnel of his office may be public employees, the provisions of Section 17-1-3(A), supra, deal {*196} specifically with them and with that particular category. Section 19 of the Appropriations Act on the other hand deals generally with public officers and employees. Such being the case, the specific provisions of Section 17-1-3(A), supra, govern reimbursement of travel expenses of district attorneys and their personnel. **State v. Spahr**, supra; Opinion 65-179, supra.

We note, in answer to an oral inquiry in connection with the question that the provisions of Section 16-3-33, N.M.S.A., 1953 Comp. (P.S.) pertaining to travel expenses of district judges and court employees, do not apply.

By: James V. Noble

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