Opinion No. 69-101

August 25, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Ray Shollenbarger, Assistant Attorney General

TO: Honorable Garnett Burks, District Judge, Seventh Judicial District, P.O. Box 1127, Socorro, New Mexico 87801

QUESTIONS

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When jurors are sequestered or kept together at night during a trial are they to be paid for this time as well as time actually spent in Court?

CONCLUSION

Yes.

OPINION

{*161} ANALYSIS

Prior to July 1, 1969, Section 19-1-41, New Mexico Statutes Annotated, 1953 Compilation dealt with the compensation to be paid jurors. This section provided:

"Hereafter the rate of pay for all members of petit and grand juries in district courts within the State of New Mexico shall be five dollars ($ 5.00) per diem and mileage necessarily traveled from their homes to the place of holding court and return at the rate of (7 [cents]) seven cents a mile."

Under this section jurors were compensated at a rate of $ 5.00 per day whether the day was 8 hours or 24 hours. Jurors who were kept together overnight were not allowed any additional compensation. This procedure was in conformity with that employed in other jurisdictions where jurors were paid on a per diem basis. (Monroe v. State, 157 Ind. 45, 60 N.E. 708 (1901).

On July 1, 1969, Section 19-1-15, New Mexico Statutes Annotated, 1953 Compilation (Chapter 222, Section 15, Laws of 1969), became effective. This section changed the method of compensation from the per diem rate to an hourly rate. It provided in part:

"Jury commissioners, persons summoned for jury service and jurors shall be compensated for their time in travel, attendance and service, the sum of one dollar twenty-five cents ($ 1.25) for each hour."

It is our opinion that the legislature in making this change intended to provide a more equitable basis for compensating jurors based on the time actually spent in attendance to the court. Therefore, when jurors are kept together a night during the course of a trial, they should be paid for this time.