

Opinion No. 22-3279

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BY: HARRY S. BOWMAN, Attorney General

TO: Mr. Carl Bishop, Member, Board of County Commissioners, Santa Fe, New Mexico.

Payment Fees to Justices of the Peace in Criminal Cases.

OPINION

{*122} I have several inquiries, both oral and written, regarding the matter of the payment of fees by boards of county commissioners to justices of the peace for services rendered by such justices in criminal cases.

There is no provision of law which requires the payment of fees by counties to justices of the peace in criminal matters. (Opinion former Attorney General, Frank W. Clancy, No. 1722, January 26, 1916.)

The question then arises as to the authority of the county to make provision for payment of such fees and to make payment thereof to justices of the peace in view of the failure of the statutes to provide therefor.

I am advised that several justices of the peace throughout the state have signified their intention of resigning their offices unless some provision be made for the payment of fees in those cases where they act in the capacity above mentioned.

If justices of the peace cannot be secured to perform the duties of a committing magistrate without the payment of fees for such services it is probable that the various boards of county commissioners would be authorized to provide fees for such officials, particularly if provision therefor were made in the county budgets.

Of course, the amount of such fees, not being prescribed by law, must be designated by the board.

Section 1201, Code 1915, clothes boards of county commissioners with the care of the county property and the management of the interests of the county in all cases where no other provisions are made by law.

Section 1150, Code 1915, after providing that counties should be bodies corporate and politic, prescribes certain general powers for such counties, the nature of which were discussed in the case of Agua Pura Company vs. Mayer, 10 N.M., 6; 60 Pac. 208; 50 L.R.A., 224, and Coler vs. Board of County Commissioners, 6 N.M., 88; 27 Pac. 619.

In the foregoing cases it was declared by the court that the powers of counties as defined in Section 1150 are not only corporate but administrative and that the administrative powers as conferred upon county boards were in such terms as to leave the exercise thereof to the discretion of the boards of county commissioners in the management of the interests of the county and the concerns necessary to exercise such powers.

The court recognized that the general powers granted in the section contemplated the exercise of a very broad discretion upon the part of the boards of county commissioners.

In the very recent case of Nohl vs. Board of Education of the City of Albuquerque, 199 Pac. 373, the Supreme Court of this State, in construing the provisions of Section 8, Chapter 105, Laws 1917, giving boards of education authority to defray all other expenses connected with the proper conduct of the public schools in their respective districts, held that an expenditure of school funds to pay premiums {^{*}123} upon group insurance upon the lives of teachers of the district was within the powers of the boards of education.

Both the territorial supreme court, in the case of Agua Pura Company vs. Mayor, and the State Supreme Court, in the case of Nohl vs. Board of Education, supra, have taken the position that general powers delegated to governmental agencies wherein expenditures of funds are involved will authorize a wide discretion in the manner and purposes for which such funds are used, and in view of these holdings it is my opinion that boards of county commissioners may, if they find it necessary to properly carry on the business of the county, expend county funds for the payment of the fees to justices of the peace in criminal cases where the fees cannot be collected by such officers from the defendants.

May I be permitted to suggest, however, that in the interests of economy the fees be allowed to justices of the peace only in felony cases and that such officers be given to understand that no fees will be allowed in cases of misdemeanors tried by them.