

Opinion No. [29-26]

May 20, 1929

BY: M. A. OTERO, JR., Attorney General

TO: Hon. Luis E. Armijo, District Judge, Fourth Judicial District, Las Vegas, New Mexico.

DISTRICT ATTORNEY -- Expense account -- mileage.

OPINION

You have handed me a certified copy of Committee Substitute for House Bill No. 334, passed by the recent session of the legislature and approved March 12, 1929, entitled, "An Act Prescribing the Maximum Rate of Mileage Chargeable against the State, or Any County Thereof, for Car Travel; etc." and have asked my opinion as to whether or not I believe that the same applies to expense accounts made by district attorneys.

In reply thereto will state that this act, as originally introduced, provided that the maximum rate of mileage for car travel chargeable against the state or any county thereof should be ten cents per mile, except as otherwise specifically provided by law, the very purpose of the bill being to put a limitation on traveling expenses chargeable against the state or any county thereof by the various state and county officers, including district attorneys. In view of the fact, however, that a number of officers, including sheriffs and county commissioners, are permitted to draw mileage at the rate of twelve and one-half cents per mile, the words "except as otherwise specifically provided by law" were placed therein so as not to interfere with their prerogatives in this regard.

It seems, however, that when the original bill was referred to a committee the committee revised the same to provide twelve and one-half as the limitation instead of ten cents, but they left in the words quoted above. This is immaterial, however, because, if there are any other officers who are specifically allowed by law to draw mileage in excess of twelve and one-half cents per mile, then they will not be disturbed in the premises.

It is true that section 1, chapter 133, Laws of 1927, provides:

"That the actual traveling expenses, including hotel bills, of district attorneys and their assistants, incurred while in the discharge of their duties shall be paid by the counties in behalf of which the same are incurred, upon order of the court, supported by sworn statement of such expenses, out of the court fund of each county."

This, however, is not affected by the provisions of said Committee substitute for House Bill No. 334. It simply means that district attorneys have the right to have their "actual traveling expenses" paid by the county, whatever they may happen to be, but in the

event that they elect to charge mileage for their cars on any trips they may happen to take, in lieu of charging for gas and oil, etc., then, in that event, they would be limited to a charge of twelve and one-half cents per mile, under the provisions of the newly enacted statute quoted above.

In other words, if a district attorney, in making a trip, turns in receipts for the amount of gas and oil, and the like, which his trip cost him, he can collect on it; on the other hand, if he decides to charge mileage, he is limited to twelve and one-half cents per mile. However, I do not believe that he can charge both mileage and traveling expenses, for the reason that mileage is supposed to be given in lieu of all such expenses, exclusive of meals and hotel, of course.

I am returning to you herewith the said certified copy of the law.

Trusting that the foregoing gives you the information you desire, I am