

Opinion No. 37-1806

October 29, 1937

BY: FRANK H. PATTON, Attorney General,

TO: Mr. E. R. Cooper Assistant District Attorney Las Vegas, New Mexico

{*174} I wrote you some time ago in regard to an inquiry made by you as to whether post mortem examinations should be paid out of the court fund in cases where such examinations are necessary to obtain evidence in homicide cases. I have advised with the office of the State Comptroller in the matter, so that we may all be in accord.

There is no provision in the statute with respect to the fund from which such examinations are to be made, and if, in making the budget, expenditures for that purpose have been anticipated, they should be paid so far as possible from the fund where budget for that purpose has been included.

Where no such provision has been made or where it is insufficient, we have concluded and the Comptroller's office has agreed, that they may be paid out of the court fund when in the discretion of the district court they are necessary in the administration of justice.

The moneys in the court fund are to be "disbursed for the payment of expenses of the district court" upon allowance made by the district judge. Sec. 34-306, 1929 Compilation. What is meant by "expenses of the district court" is not stated, and since at least 1917, when Attorney General Harry L. Patton, in Opinion No. 1910, (Atty. Gen. Opp. 1917, p. 1), said that "the court fund is under the absolute control of the court", it has been the uniform administrative interpretation of this statute that the court has very wide discretion as to the manner in which such funds shall be expended.

In the exercise of this discretion, many items not otherwise provided for by law, but which become necessary in the administration of justice, may be paid out of the court fund if in the discretion of the court they are expenses of the district court and should be so paid.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.