

Opinion No. 39-3028

February 15, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. James Strosnider, Sergeant, New Mexico State Police, Santa Fe, New Mexico.

{*16} I have your two inquiries of February 13 as to the proper construction of Section 7, Chapter 119, of the Laws of 1935.

This section provides "a suitable and distinctive uniform shall be prescribed by the Board of Supervisors and an allowance of Ten (\$ 10.00) Dollars per month over and above his salary, as hereinafter fixed, shall be allowed to each policeman as and for clothing allowance." You inquire first whether this allowance of ten dollars for "a suitable and distinctive uniform" includes insignia, emblems, buttons, chevrons, cap bands, cap wreaths, etc., or whether these {*17} things are to be furnished by the department separately.

It is my opinion that all these things go to make the complete uniform, and that without them it might not be either suitable or distinctive. Furthermore, the Legislature specifically stated that the Board "shall **also** provide and issue to each member of the force a badge." Badges, emblems, chevrons, etc., are all ensignae of office or rank. Under a well known rule of interpretation, the inclusion of one thing from a class excludes all others, and consequently I am firmly of the opinion that the Legislature intended to provide for a badge only out of state funds and to exclude all other ensignae of rank or office.

The second question is whether or not this allowance is to be paid only to the extent actually needed and used, or whether the officer is entitled to the allowance regardless of the use. As I understand it, it has been the practice for several years and probably since the law was first passed in 1933 to credit each officer with whatever is expended for uniforms and then periodically issue a voucher for the balance. The statute specifically says that there shall be an allowance of ten dollars "over and above his salary." In stating the salary it again reiterates by saying that the salary shall be a certain figure "exclusive of allowance." This indicates that the Legislature considered that allowance as a cash allowance and not merely an appropriation for each man from which uniforms should be paid for.

Since this was the interpretation of the department, and since the Legislature reenacted the Act in 1935 presumably with the knowledge of that interpretation, it is my opinion that the Legislature intended for the allowance to be made as specified permitting the officer to keep such amount as might be saved from the small allowance. Of course, there is no reason why the department should not give part of the allowance by credit and the balance in cash periodically to be used by the officer in buying new uniforms or other parts of the uniform which he may desire to replace.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.