

## Opinion No. 4-0A

January 28, 1931

**BY:** Frank H. Patton, Asst. Attorney General

**TO:** Hon. Arsenio Velarde, State Auditor, Santa Fe, New Mexico.

{\*21} We have your letter of January 26, requesting advice as to whether or not the state should pay the expense accounts of a sheriff who went to Denver to secure a prisoner under requisition papers executed by the Governor.

You have called our attention to section 56-124 which provides when a punishment of a criminal shall be confinement in the penitentiary, the expenses shall be paid out of the account of the State Treasury and you suggest that as the prisoner has not as yet been sentenced that perhaps the state should not be compelled to pay such expense.

We are unable to agree with your conclusion in as much as the section quoted is a part of chapter 118, of the Session Laws of 1927 and having reference to extradition proceedings. The matter of actual sentence is not involved, and the section referred to simply means that where the criminal is extradited after having committed an offense, the punishment of which, is imprisonment in the penitentiary, the expenses shall be paid by the state and in other cases where the criminal extradited is subject to some punishment other than being imprisoned in the penitentiary, the expense is to be borne by the county.

In other words the punishment, though not yet actually imposed, is made the basis of determining who shall bear such expense. Trusting the foregoing sufficiently answers your inquiry, I am