

Opinion No. 40-3383

January 6, 1940

BY: FILO M. SEDILLO, Attorney General

TO: Mr. M. A. Threet, District Attorney, Third Judicial District, Las Cruces, New Mexico.

{*130} Your letter of January 4th requests an opinion as to whether the district judge may authorize reimbursement for rent paid for office used by you as district attorney. I am satisfied that he is fully justified under the law in making allowance from the court fund for that purpose.

Judge Harry L. Patton, when he was attorney general, held that a person acting under authority of the district judge as clerk could be paid for his services from the court fund, though there was no specific statute directing such payment, and in ruling upon that question stated, on inquiry from the State Traveling Auditor:

"Section 1369, Code 1915, provides for the creation and disbursement of the court fund. The disbursement of this fund is safeguarded to the extent that the county treasurer shall make payments therefrom only upon the certificate of the clerk of the court that an allowance has been made by the court. The only restriction upon the authority of the court is that no certificate shall be issued unless there is sufficient money in the fund to meet the same. **The court fund is under the absolute control of the court.** In my opinion the purposes {*131} for which this fund is disbursed are not proper subject of inquiry from your department." Op. Atty. Gen., 1917, p. 1.

The Legislature which enacted Chapter 72, Laws of 1929, now Section 34-306, 1929 Compilation, apparently agreed with him in his interpretation of the statute, for in reenacting the law the language of the statute referred to by Judge Patton was altered in such manner that it more closely agrees with his interpretation of the court's control of the fund. The old law read:

". . . when collected it shall be turned over to the county treasurer, to be by him disbursed for the payment of the expenses of the district courts in his county only upon a certificate of the clerk of the district court of the district in which his county is situated, that an allowance has been made by said court . . ."

It now reads:

". . . to be by him disbursed for the payment of the expenses of the district court in his county only as provided by law **or** upon a certificate of the clerk of the district court of the district in which his county is situated, that an allowance has been made by the court . . ."

The re-enactment of the statute in the above language, in the face of the administrative interpretation of similar language, is indicative of an intention on the part of the legislature to approve such an interpretation. I personally know that several judges in the administration of that fund have for years interpreted the statute to give them full authority to disburse it when necessary for any purpose connected with the administration of justice, which is the business of the court, and in my opinion correctly so. In at least one district one-half of the rent of the assistant district attorney's private office was paid by the judge from his court fund a few years ago, with full approval of the state comptroller's office. We have ruled that when necessary post mortems may be paid out of the court fund. -Op. No. 1806, Atty' Gen's. Op. 1937, p. 174.

It is my opinion that the legislature intended to give the court a wide discretion in the use of the fund for any purpose connected with the administration of justice. Though in a strict sense the district attorney is not a part of the court, he is, in this state, a part of the judicial system of the state and a state, not county, officer. *Ward v. Romero*, 17 N.M. 88. In specifically providing for payment of supplies, etc., out of the court fund, the legislature so considered him. No provision is made for rent probably because it was thought space would be available in the court houses, but when not available, rent for office space may properly, in my opinion, be paid out of one or more of the various court funds in the district, in the discretion of the court.

In subscribing to Judge Patton's interpretation of the law in this respect, I do not wish to be understood, however, as saying that a district judge may use such moneys for **any** public purpose, however laudable the same may be. His discretion is limited to purposes connected with the administration of justice. I am sure this is what Judge Patton meant also. I interpolate this because of late the theory has been advanced that the court fund, like the governor's contingent appropriation, is not subject to audit of any sort, and with which theory I thoroughly disagree.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.

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