

January 10, 1950

Honorable Don T. Udall  
Judge of Superior Court  
Navajo County  
Holbrook, Arizona

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**ARIZONA ATTORNEY GENERAL**

Dear Judge:

We have your letter of January 3 wherein you ask:

"Where probation officer is appointed by the Court, his salary fixed by the Judge and approved by the Board of Supervisors, can the supervisors legally refuse to pay travel expense of probation officer when the expense is reasonable and appears to be necessary in carrying out the duties of his office?"

In this case a nominal amount was set up in the Superior Court's budget, 1949-1950, to cover travel expense of the probation officer. The amount set up was not sufficient and the fund was exhausted in the first six months of the fiscal year. I am asking this further question, to-wit:

Can the Judge issue court order on County Treasurer to pay travel expense by reason of the fact that the probation officer has been ordered to perform certain acts according to law, (Section 46-123, 1949 Cumulative Pocket Supplement, ACA 1939), or is mandamus or declaratory judgment proceedings necessary as followed in the cases of Powers v. Isley, 66 Ariz. 94 and Fuller v. Calhoun, 39 Ariz. 40?"

Section 6 of Article 6 of the Constitution of Arizona vests jurisdiction in the Superior Court of each of the counties of the State in juvenile matters. Pursuant to this constitutional provision, the legislature enacted legislation setting up machinery and providing procedure in juvenile cases. By Section 8, Chapter 80, Laws of 1941, (Section 46-123, Supplement), the legislature authorized the judges to appoint juvenile probation officers and provides the probation officer shall:

"\* \* \* have the authority of a peace officer. \* \* \* 1. look after the interests of neglected, delinquent, and dependent children of the county; 2. make investigations and file petitions; 3. be present in court when cases are heard concerning children and represent their interests; 4. furnish the court such information and assistance as it may require; 5. assisting the collection of sums ordered paid for the support of children; and, 6. perform such other acts as may be ordered by the court."

By this act, the legislature has recognized the probation officer as a necessary adjunct and part of the court for the handling and disposition of juvenile matters and, in our opinion, the probation officer is a public officer within the definition of that term as stated by the Supreme Court in the cases of Winsor v. Hunt, 29 Ariz. 504, 243 P. 407, and Stapleton v. Frohmiller, 53 Ariz. 11, 85 P. 2d 49, in that the office is created by statute; he is required to give an official bond; is designated as an officer in the act, and his duties are set forth therein, which duties involve the exercise of some portion of the sovereign power of the State in that he is required to look after the interests of neglected, delinquent and dependent children, make investigations and file petitions, and represents in court the State's and children's interests when cases are heard concerning children.

Section 17-310, ACA 1939, provides the board of supervisors shall create an expense account and shall order whenever necessary the transfer of sufficient money into said fund from the general fund of the county to pay the expenses of maintaining the government of such county until additional revenues may be collected to defray such expenses. Section 17-311 of the Code defines the expense fund as the expense of maintaining the government consisting, among other things, of official salaries, fees and mileage, and fees and mileage of jurors and witnesses. Section 73-502 and Section 73-503, as amended by Chapter 98, Laws of 1945, prescribe the method of fixing the budget and places limitation upon the creation of debts not authorized by the budget.

As we understand from your letter, the board of supervisors did set up in the Superior Court's budget a fund to cover the estimated travel expense of the probation officer but the amount thereof has proven inadequate to carry on the work of the probation officer and that the amount budgeted for that purpose has been exhausted, and you as juvenile judge deem it necessary that an additional amount be available to pay the mileage expense of the probation officer to enable him to properly discharge his duties.

We think the probation officer is as much of an adjunct of your Court for the handling of juvenile matters as a jury is in the disposition of civil and criminal cases, and his travel expense is included in maintaining the State Government, and the county may legally pay the necessary travel expense of the juvenile probation officer notwithstanding the sum budgeted for such expense has become exhausted. The county board should make the necessary transfer to pay such expense as authorized by Section 17-310, supra. The case of Fullen v. Calhoun, 39 Ariz. 40, 3 P. 2d 786, is authority for the payment of such expense.

While the Calhoun case involved a state of facts where the amount budgeted for jurors' compensation and mileage was exhausted, and a juror had served as such and resorted to an action of mandamus to compel the board of supervisors to allow and pay his claim therefor notwithstanding the amount budgeted for jurors' compensation and mileage was exhausted, we think the case is analogous to the situation you present. In the Fullen case, the Court said:

"The compensation of jurors is as much fixed as the salary of officers, the interest or principal of county bonds, or items or amounts of special levies. It is true no one can know beforehand the number of juror days or the amount of juror mileage there will be in any given fiscal year, it all depending upon the number of jury cases and the time consumed in their trial, and for that reason the items for jury fees and mileage cannot be definitely determined for the budget. The estimate of the board of supervisors entering the annual budget for this account at most can only approximate the expense. If the estimate as contained in the budget

is inadequate to pay all the fees and mileage of jurors, the jurors nevertheless are entitled to warrants on the treasury of the county, to be paid out of sources of revenue other than property taxation, if available for that purpose; otherwise to be registered by the county treasurer  
\* \* \* " (Emphasis supplied)

Your second question as to whether the probation officer can be paid by the treasurer on an order issued by the court or must be paid on a claim in the regular manner, presents a question we must answer without the help of a decision of our Supreme Court. We are required to refer to several sections of our Code to answer this question.

Section 12-713, ACA 1939 (Supplement) authorizes the payment of travel expense of public officers in the discharge of their duties. Therefore, a probation officer is entitled to reimbursement for his necessary travel expense incurred in the discharge of his duties. Section 17-316 of the Code provides no payment shall be made from the county treasury except upon demand duly presented and allowed, which claim must be in writing verified by the claimant, itemizing the expenses claimed, and such claims must be presented to the board of supervisors for allowance and ordered paid by it. The board shall not consider any claim unless demand is made in the manner provided in said section. However, the section makes an exception for compensation to jurors and witnesses and official salaries. These are the only exceptions to the statute we are able to find. Travel expense of officers is not excepted from the provision of said section.

Therefore, it is our opinion under the Fullen case the travel expense of the probation officer incurred in the discharge of the duties of his office is a legal charge against the county and can be legally paid, notwithstanding the amount budgeted for that purpose has been exhausted.

We are further of the opinion you are not authorized to enter an order directing the payment of the travel expense of the probation officer out of the county treasury, but that a claim therefor must be presented to the board of supervisors in the manner prescribed in Section 17-316 and, that upon the presentation of such claim properly approved by you, it is the duty of the board of supervisors to allow said claim and draw a warrant therefor. In the case of Dunn v. Corydon, 184 N.E. 535 (Ind.), the court said:

"We quite agree with appellant that the Legislature has no power or authority to curtail and hamper the courts in the exercise of their lawful duties, and that the court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and to employ the relatrix as a page in said court if it was reasonably necessary for the practical and efficient operation of its lawful and designated duties. This power in the court necessarily implies the power and authority to order paid the reasonable and necessary expense of such assistance. State ex rel. v. Flynn et al. (1903) 161 Ind. 554, 69 N. E. 159; Board v. Stout (1893) 136 Ind. 53, 35 N.E. 683, 22 L.R.A. 398. And it then becomes the duty of the county council to make the proper appropriation to meet such expense. Should the county council refuse so to do the proper action would be to mandate them, and not the county auditor. \* \* \* " (Emphasis supplied)

Very truly yours,

FRED O. WILSON  
Attorney General

EARL ANDERSON  
Assistant Attorney General