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October 6, 1955
Opinion No. 55-197

REQUESTED BY: Hon. Bernard T. Caine
County Attorney of Mohave County
Kingman, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General
Jack G. Marks, Special Assistant
Attorney General

QUESTION 1: Is the sheriff allowed his "actual and necessary travel expenses" without limitation, or is he under the same limitation as other public officers?

CONCLUSION: The sheriff is not subject to the same limitations as other public officers, because a special statute authorizes the allowance of his "actual and necessary expenses" without limitation.

QUESTION 2: What limitations are imposed on the superior court judges for travel expenses?

CONCLUSION: No limitations other than that the expenses must be their "actual expenses".

QUESTION 3: Must the juvenile court budget its expenses and stay within its budget, or is it without limitation?

CONCLUSION: The juvenile court, being a part of the superior court, must budget its expenses and stay within its budget in the same manner as all other county offices.

There are two sections of the Arizona Code, 1939, which specifically deal with the travel expenses of sheriffs. They read as follows:

> "12-710. Sheriffs allowed expenses--Monthly settlements.--The sheriffs shall be allowed the actual and necessary expenses incurred in pursuit of criminals, for transacting all civil or criminal business, and for the service of all processes and notices, and such expenses shall be a county charge. The sheriffs shall pay into the county treasury, on the first Monday of each month, all fees and mileage earned and collected

by them." (Laws of 1917, Ch. 61, §10, p. 86; rev., R. C. 1928, §2800.) (Emphasis supplied)

"17-335. Fund for sheriff's expenses.--The board shall, at the first regular meeting in each month, set apart out of the expense fund of the county, a sum sufficient to pay the estimated traveling and other expenses of the sheriff during such month, which sum shall be not less than the amount paid for such expenses for the preceding month, and the sum so set apart shall thereupon be paid over to the sheriff for the payment of such expenses. At the end of each month the sheriff shall render a full and true account of all such expenses, and any balance remaining unexpended shall be paid by the sheriff into the county treasury. If the sum so paid over is insufficient to pay the expenses incurred during the month, the excess shall be allowed and paid as other claims against the county." (R. S. 1913, §2459; rev., R. C. 1928, §800.) (Emphasis supplied)

A similar statute, relating to the expenses of superior court judges, is found in Section 12-702, ACA, 1939, which reads as follows:

"12-702. Expenses of judges sitting in other courts.--Whenever a judge of a superior court of any county is called into another county by the superior judge thereof, or by the governor, to hold court, or to preside over any proceeding, he shall be paid by the county into which he is called, his actual expenses incurred thereby.* * *" (Laws 1912 (S.S.), ch. 2, §§1,2, p. 3; R. S. 1913, §§3223, 3224; Laws 1917, ch. 61, §§2, 3, p. 86; 1922, ch. 35, §56, p. 174; cons. & rev., R. C. 1928, §2792.) (Emphasis supplied)

That "actual traveling expenses" without limitation may be authorized by statute and payment compelled has been held in Van Veen v. County of Graham, 13 Ariz. 167 (1910). That special provisions may be made for specific officers, taking their travel reimbursement out of the general provisions of Section 12-713, ACA, 1939, as amended, may be inferred from the language used by the Supreme Court in Earhart v. Frohmiller, 65 Ariz. 221 (1947), in its per curiam opinion, as follows:

"When a public officer of the state or county is required to travel in order to perform his duty, provision has been made by the legislature

> to reimburse him for 'out of pocket' cash legitimately expended for subsistence and lodging, sec. 12-713, A.C.A. Similar provisions have been made for certain specific officers; e. g. sec. 12-702 provides for the expenses of judges; sec. 12-710 for sheriffs, and sec. 12-712 for justices of the peace." (65 Ariz. 221, 226) (Emphasis supplied)

The general statute referred to in the aforesaid opinion, Section 12-713, ACA, 1939, entitled "Mileage and traveling expenses", has its origin in Section 2803, R. C. 1928. Through 1947, when Earhart v. Frohmiller, supra, was decided, it has been amended four times by Chapter 40, Laws of 1933; Chapter 69, Laws of 1935; Chapter 12, Laws of 1941 and Chapter 83, Laws of 1945, none of which contained a section repealing laws in conflict therewith. However, by Section 1, Chapter 26, Laws of 1949, this section was again amended and, for the first time, by Section 2 of Chapter 26, supra, a repeal provision was included, which reads as follows:

> "Sec. 2. REPEAL. Any law or parts of law in conflict herewith are hereby repealed. Section 12-715, Arizona Code of 1939, as amended, is hereby repealed. Section 12-716, Arizona Code of 1939, as amended, is hereby repealed." (Emphasis supplied)

The question to be resolved is whether Sections 12-702 and 12-710 were repealed by the first sentence of Section 2 of Chapter 26, supra. These sections are special statutes which govern the exceptions stated therein, to the extent that they are inconsistent with the general statute, Section 12-713 (Mercado v. Superior Court, 51 Ariz. 436 (1938); Moore v. Farmers Mutual Manufacturing & Ginning Co., 51 Ariz. 378 (1938)), but are not in conflict with section 12-713. Furthermore, Section 12-702 and 12-710, appear in the same article (Chapter 12, Article 7, ACA, 1939, as amended) with Sections 12-715 and 12-716, which were repealed by specific designation. The intent of the Legislature seems manifest not to have repealed Sections 12-702 and 12-710, for had such been its intent, it surely would have done so by specifying their section numbers (as it did with respect to Sections 12-715 and 12-716), especially in view of the interpretation given to Sections 12-702 and 12-710 two years earlier in Earhart v. Frohmiller, supra. Sections 12-702 and 12-710 were not, therefore, expressly repealed by Section 2 of Chapter 26, supra.

Nor may Sections 12-702 and 12-710 be construed as having been repealed by implication, for the rule of construction is "that a general act will not be held to repeal a special act unless the purpose and intent of the repealing act is manifest." Hudson v. Brooks, 62 Ariz. 505, 513 (1945). Stated more fully,

the principles governing implied repeal of an earlier special act by a later general enactment are as follows:

> "The rule is that a later act, general in its terms, will not be construed as repealing a pir-or act treating in a special way something within the purview of the general act. In other words, a special or particular statute is not repealed by a general statute, unless the intent to repeal is manifest. * * *
>
> "It should also be borne in mind that 'repeals by implication are not favored, and will not be indulged, if there is any other reasonable construction.'* * * Another rule is 'that different statutes bearing upon the same subject matter should be so construed, if possible, as to give effect to all. * * *" (Rowland v. McBride, 35 Ariz. 511, 520. (1929)).

Accord: Arizona Corporation Commission v. Catalina Foothills Estates, 78 Ariz. 245 (1954); Arizona Tax Commission v. Dairy & Consumers Cooperative Association, 70 Ariz. 7 (1950); Shapley v. Frohmiller, 64 Ariz. 35 (1946)

No intent to repeal Sections 12-702 and 12-710 is manifest, and these sections may be construed to give effect to them, as well as Section 12-713, within the principles laid down in Rowland v. McBride, supra.

Subsequent to Chapter 26, Laws of 1949, supra, Section 12-713, was amended by Chapter 129, Laws of 1954, and Chapter 133, Laws of 1955, but neither of these amendatory acts provided for the repeal of any law.

It is, therefor, the opinion of the Department of Law that the sheriffs and superior court judges are entitled to their "actual and necessary expenses" and "actual expenses", respectively, without the imposition of the limitations contained in Section 12-713. However, the Board of Supervisors must be satisfied in each instance that the expenses claimed are the actual expenses, in the case of judges, and both actual and necessary expenses, when examining the claims of sheriffs and their deputies.

With respect to Question No. 3, the juvenile court, as designated in the Juvenile Code (Chapter 80, Laws of 1941) is a branch of the superior court of each county (Sections 46-117 and 46-118, ACA, 1939, as amended). The salaries of its officers and employees are fixed by the judge presiding in the juvenile court, with the approval of the board of supervisors, and are a county charge (Section 46-123a, ACA, 1939, as amended). In all

respects, therefore, unless there be some statutory exception, such as found relative to the expenses of superior court judges (Section 12-702) or sheriffs (Section 12-710), the juvenile court and its personnel are to be treated as are all other county officers and employees.

No such exception having been found as to the expenses of juvenile court and its personnel, it is the opinion of the Department of Law that such expenses are governed by the general rules applicable to all county departments, public offices and officials, to wit: that the juvenile court is subject to the budgetary limitations of Chapter 73, Article 5, and Chapter 17, Article 3, of the Arizona Code, 1939, as amended, and that the traveling expenses of its officers and employees are subject to the limitations of Section 12-713.

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