

Opinion No. 52-5593

September 25, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Paul Tackett District Attorney Second Judicial District Second Floor Court House Albuquerque, New Mexico

{*304} This is in reply to your letter of September 10, 1952 in which you requested an opinion as to whether under the requirements of Section 41-4523 of the New Mexico Statutes Annotated, 1941 Compilation, it is necessary that justices of the peace remit their court costs to the County Treasurer. Section 41-4523 of the New Mexico Statutes Annotated 1941 Compilation reads as follows:

"Accounting by public officials -- Time specified -- No set-off. -- Every person mentioned in Section 35-1801, New Mexico Statutes Annotated, 1929 Compilation (§ 41-4522), shall pay over the same money that he may have received in the discharge of his duties, and shall not set up any amounts as a set-off against any moneys that he may have received; and all clerks of district courts, sheriffs, and all others, except justices of the peace and constables, shall pay into the respective treasures all the moneys collected on **fin**es, sixty (60) days after said money has been collected. Provided, that justices of the peace and constables shall pay over such money within fifteen (15) days from the collection thereof." (underlining supplied).

Section 41-4523 of the N.M.S.A., 1941 Compilation specifically mentions and provides for money collected as **fin**es and does not in my opinion, include court costs collected by justices of the peace in civil or criminal cases.

Section 38-1918 N.M.S.A., 1941 Compilation gives a clear indication of the legislative intent as to the retention of costs collected by justices of the peace. The Section states:

"Recovery of costs in criminal proceedings from county treasurer -- Recovery from defendant. -- Hereafter justices of the peace, who, at the instance of any county or state law enforcement agency, shall hold or try criminal proceedings, shall recover the costs allowed by law from the funds of the county {*305} treasurers of their respective counties; Provided, however, that the said justices of the peace shall in the event the defendant is found guilty, attempt to recover said costs from said defendant."

It is my opinion that the fees and costs of a justice of the peace as set forth in Section 38-1901 N.M.S.A., 1941 Compilation are to be collected and retained by them as the emoluments of their office.

The State Comptroller has issued under date of October 11, 1951, No. 40-9, Rules and Regulations governing the handling of funds collected by justices of the peace. It is my opinion that, insofar as these regulations require that the justices of the peace remit all

fees and costs to the County Treasurer, they are beyond the authority of the Comptroller to impose. In other respects the regulations are fully within the Comptroller's authority to prescribe the forms, methods and practices of accounting for public funds by public officials.

Trusting this fully answers your inquiry, I remain