

Opinion No. 54-5999

August 3, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Paul Tackett District Attorney Second Judicial District Albuquerque, New Mexico. Honorable Bertrand B. Prince District Attorney First Judicial District Santa Fe, New Mexico

{*458} Both of you have recently requested identical opinions from this office concerning legal fees charged by the various Justices of the Peace under given hypothetical situations.

As a preliminary, the fees to be charged by Justices of the Peace are set out and enumerated in Section 38-1901, N.M.S.A., 1941 Compilation. The Attorney General's Office has held that the fees contained herein are emoluments of the office in Opinion No. 5593. The last paragraph of the Section above cited reads as follows:

"No fees, other than those herein provided, shall be charged or collected, and provided further, that the total fees of a justice of the peace in any civil or criminal cause shall not exceed the sum of six dollars and fifty cents (\$ 6.50.)"

Of course, the Justices of the Peace may not, under the statute herein above cited, collect any fees which are not within the contemplation of that statute, nor any fees for which the service was not rendered.

The following are examples of situations in which the enumerated fees may be charged:

1. In a simple traffic violation case wherein the defendant is cited by a police officer to appear, and he does appear and immediately enters his plea of guilty, the following are permissible charges:

For filing the Complaint \$ 0.75
For commencing the action on
the docket .25
For accepting the plea of
guilty 1.00
For entering the sentence
upon the docket .75
For entering the satisfaction
of such sentence .25
\$ 3.00

In the event the defendant should request a cost bill, an additional fee of \$ 0.25 is permitted. This, however, is not permitted unless the defendant should specifically

request such a cost bill. In the case above, no summons, warrant, mittimus, venire facias or order publication is required. A warrant is a document which must be served upon the defendant and in the case given, the defendant has submitted to the jurisdiction of the Court, and no service of a warrant is necessary. Of course, the service of the citation by the police officer cannot in any way be credited to the Justice of the Peace. There has been a practice of charging \$ 1.00 for preparation of the abstract which is submitted to the Bureau of Revenue. This abstract is required by law, but is not a transcript and cannot be assessed against the defendant, until specific legislative authority is given.

2. In a case where a person pleads not guilty, and a hearing is had with a jury, the following fees may arise:

"For issuing each summons,
warrant, mittimus, venire facias
or order of publication \$ 0.75
For a subpoena or attachment
for a witness or witnesses,
including all names asked to
be inserted therein, at the
time of issuing same .35
For each oath administered
to witness .15
For trial of a case with or
without a jury where the defendant
appears and defends
the action 2.00
For entering each order for
a jury when demanded .50
For receiving and entering the
verdict of a jury or entering
the disagreement and discharge
of a jury .25
For entering date of issue and
of return day of any process,
together with copying the officer's
return on said process
in docket .25
For drawing each original
criminal complaint or complaint
for search warrant or
in peace proceedings or forcible
entry and detainer, swearing
the party thereto and
certifying each oath .75
For drawing each affidavit,

swearing the party thereto
and certifying each oath \$.35
For entering commencement
of action on docket .25
For drawing each bond .50
For receiving and approving
each bond, including the
acknowledgment
and justifying
of sureties thereto .75
For taking a recognizance and
noting same on docket .25
For each order of continuance .50
For entering satisfaction of
judgment .25
For entering on docket an
allowance of an appeal .20
\$ 8.05

{*459} There may be variations of this, but only the amount to be charged should be for the work actually done. It can be seen quite easily that in such a case the costs will, in all probability, exceed the sum of \$ 6.50. This, however, is the legal maximum which may be charged, and in no case is a charge of an amount in excess of the \$ 6.50 authorized.

3. In a case where a person pleads not guilty, but asks for an immediate hearing without a jury, the following fees may arise, though each of them will not arise in every case:

"For subpoena of each witness .35
For each oath administered
to witness .15
For trial of a case with or
without a jury where the
defendant
appears and defends
the action 2.00
For entering date of issue
and of return day of any
process,
together with copying the
officer's return on said process
in docket .25
For entry of judgment or
dismissal
or issuing each execution
or order of sale .75

For entering commencement
of action on docket .25
For taking a recognizance and
noting same on docket .25
For each order of continuance .50
For entering satisfaction of
judgment .25
\$ 4.75"

This, of course, may or may not exceed the allowable \$ 6.50, but in the case herein, depending upon the number of witnesses subpoenaed and sworn, where it does not exceed \$ 6.50, only the amount shown may be charged.

The allowable fees charged by Justices of the Peace and other officers whose remuneration is in fees is only the fees for the work actually performed, and in no case may a Justice of the Peace, Constable, or other officer who receives {*460} fees, receive any fee for work which was not actually performed, and which cannot be pointed out in his fee schedule as allowed by the Legislature.

We realize that the cases 2 and 3 above are somewhat nebulous but it was our intention to point out that under the various facts of any given case, the fees will vary. It is entirely possible that under some circumstances we have omitted allowable fees, however the above are the normal and foreseeable fees in the types of cases cited.

We also realize that some of the fees outlined herein may be inadequate in view of the increased cost of living and the additional duties imposed upon the office since the schedule of fees was adopted, however that is a matter for legislative consideration and cannot be altered by any executive officer or legal interpretation.

We sincerely hope that this answers your inquiry.