

Opinion No. 55-6090

January 27, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Hon. John R. Erickson State Engineer, P. O. Box 1079, Santa Fe, New Mexico

Your letter of December 15, 1954 calls for an interpretation of Chapter 131 of Session Laws of 1931, regarding the use of fees collected under that Act. Section 9 of said Chapter 131 provides for fees and costs as follows:

1. The fees to be paid by applicants and declarants shall not exceed the reasonable cost of the service to be performed by the state engineer.
2. The applicant shall pay to the publisher the costs of the necessary advertising.
3. The applicant and protestant, or protestants, shall deposit with the state engineer a sum equal to the estimated costs of a hearing and the state engineer shall refund to the prevailing party, or parties, the sum so deposited by him or them and shall refund to the losing person or persons any unused portion of the moneys deposited by them.

It can be seen that three separate types of fees and costs are set up. Number 2 and 3, above, could properly be designated costs and make provisions for the payment of the necessary advertising and hearings by the parties directly concerned. The fees described concern only number 1, above, and the section provides that the state engineer shall establish such fees, which are not to exceed the reasonable cost of the service to be performed by the state engineer.

The section goes on to provide that all fees collected under the provisions of this Act shall be deposited with the state treasurer and by him covered into the "underground water fund" to be withdrawn by the state engineer upon vouchers properly audited for the purpose of administering this Act.

"Administration" is defined by Webster as the performance of executive duty of an institution or the like; the activity of the state in the exercise of its political powers; in a narrower sense, the activity of the executive or judicial departments, or esp. of the executive alone in the conduct of government. Therefore, the entire Act must be construed to determine what is meant by the "purpose of administering" the Act.

Section 77-1103 provides that the state engineer shall prescribe forms, prepare notices for publication and conduct hearings. Section 77-1105 provides that the state engineer shall prescribe forms for declarations. Section 77-1107 provides for applications for change of location of well, or change in the use of water, and inferentially provides that the state engineer shall make and prescribe the forms to be used. Section 77-1111 provides for rules and regulations which shall be printed and made available for

distribution. The fees set out in 77-1109 should cover the cost of the above administrative duties and all other duties reasonably connected therewith.

A reasonable interpretation of the statute would be that the reasonable cost of the services to be performed by the state engineer shall be the cost of printing the forms, the cost of preparing the rules and regulations, the stenographic work necessary for the processing of the applications and other instruments, the engineering investigations necessary for the procession of the various applications and instruments, the cost of administering the rules and regulations formulated for the purpose of carrying out the provisions of the underground water law.

In 1949, the Legislature enacted legislation with a fee setup similar to that in Section 77-1109 for the purpose of administering the well drillers law, being Chapter 148 of the Laws of 1949. Section 77-1117 (N.M.S.A. 1941 Comp.) provides that a reasonable fee, not to exceed \$ 25.00 shall be imposed by the state engineer. All fees collected under the provisions of this Act shall be deposited with the state treasurer and by him covered into the "underground water fund" to be withdrawn by the state engineer upon vouchers properly audited for the purpose of administering this Act. When the Legislature provided that the fees set out in Section 77-1117 should not exceed \$ 25.00, it was intended that the fees should cover the cost of administering the Act. Since the provisions of Section 77-1109 have the same wording as Section 77-1117, it must be construed that the fees provided for were for the purpose of administering the Act.

You are, therefore, advised that under Chapter 131, Laws of 1931, you are required to establish the fees to be paid by applicants and declarants, which fees shall not exceed the reasonable cost of the service to be performed by the State engineer in the administration of the ground water act.

This opinion expressly overrules Attorney General's Opinion No. 236 of August 8, 1931.