

Opinion No. 55-6307

November 1, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Thomas P. Foy, District Attorney, Sixth Judicial District, County Court House, Silver City, New Mexico

Receipt is acknowledged of your letter dated October 19 in which you request our opinion as to whether or not there is a conflict between § 36-19-1, N.M.S.A., 1955 Supp., and Article IV, § 27 of the Constitution of New Mexico.

Section 36-19-1, N.M.S.A., 1955 Supp., reads as follows:

"Fees of justices of the peace -- Burial of paupers -- Employment of stenographers. -- Justices of the peace in the state of New Mexico shall hereafter be allowed and entitled to demand and receive fees hereinafter stated, towit:

For each civil or criminal case docketed . . . \$ 5.00

For making copies of any paper or records in his office, for any person requesting same, for each one hundred words . . . 20

For holding an inquisition on the body of a dead person, per day, for each day necessarily employed in holding such inquisition and returning the inquisition to the office of the probate judge, the same to be paid out of the county treasury . . . \$ 7.50

And if such dead person have no visible estate, out of which to defray the costs of his burial and no friend of such decedent will undertake to bury him, the justice of the peace holding said inquisition, may contract with some suitable person to decently bury such decedent at a price not exceeding fifteen dollars (\$ 15.00), and shall give to such contractor a certificate of such contract and the same shall be allowed by the county commissioners and be paid out of the county treasury; Provided that if such decedent have any visible or available estate, the cost of holding said inquisition and said burial, not to exceed the sum of twenty dollars (\$ 20.00), shall be paid out of the same.

The justice of the peace is hereby authorized to employ a stenographer to take down the evidence at any inquisition and in felony case, who shall receive not to exceed the sum of ten dollars (\$ 10.00) per day, and where a transcript of said evidence is ordered, ten cents (10c) for each one hundred (100) words or fraction thereof and the same shall be allowed by the county commissioners upon certificate of the justice presiding and be paid out of the county treasury.

For making and certifying copies of depositions or other papers in his office, not otherwise provided for in this article, for each one hundred (100) words . . . 20

No fees, other than those herein provided, shall be charged or collected, except that justices of the peace may charge the same fees as provided by law for notaries public, for performing similar services but no such fees shall be charged for notarizing papers to be filed in the justice of the peace court; Provided, however, that justices of the peace may, in their discretion charge a fee for performing marriages, which need not be reported."

Article IV, § 27, New Mexico Constitution, reads as follows:

"No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; nor shall the compensation of any officer be increased or diminished during his term of office, except as otherwise provided in this Constitution."

From the wording of § 36-19-1, N.M.S.A., 1955 Supp., it is apparent that this is a statute fixing fees of justices of the peace, and not the compensation or salaries of same.

The wording of § 27, Article IV of the New Mexico Constitution, refers to the term "compensation" and goes on to say that the compensation of any officer cannot be increased or diminished during his term of office, except as otherwise provided in the Constitution.

In Volume 38, page 46 of Words and Phrases, under heading "Fees", "fees" are defined as payment for particular services performed, while "salaries constitute fixed compensation for continuous services over a period of time." *McNair v. Alleghany Co.*, 195 A. 118, 121, 328 Pa. 3.

In the case of *State ex rel. Jaspers et al v. West, Treasurer of Wahklakum Co.*, 125 P. 2d 624, the Supreme Court of the State of Washington, in affirming the judgment of the Superior Court in a case similar to this, said:

"Our cases do no more than hold that fees charged for specific services do not come within the constitutional prohibition and may be changed at any time."

The Supreme Court of Washington held in this case that fees charged for specific services do not come within the constitutional prohibition against increasing or diminishing the "compensation" of any public officer during his term of office, or increasing or diminishing the salary of any public officer after his election or during his term, and such fees may be changed at any time.

The Constitution of the State of Washington, Article XI, § 8, provides that the salary of any county, city, town or municipal officer shall not be increased or diminished after his election or during his term of office, nor shall the term of any such officer be extended beyond the period for which he is elected or appointed, and is almost similar to ours.

In view of the hereinbefore quoted authorities, it is the opinion of this office that there is no conflict between § 36-19-1, N.M.S.A., 1955 Supp., and Art. IV, § 27 of the New Mexico Constitution, which prohibits the increasing or diminishing of the compensation of an officer during his term of office.

Trusting that this fully answers your inquiry, I remain

By Hilario Rubio

Assistant Attorney General