

Opinion No. 56-6436

May 2, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Abner Schreiber, Assistant District Attorney, First Judicial District, Los Alamos, New Mexico

We have your letter of April 2nd, 1956, in which you request an opinion from this office as to what fee should be charged by a constable for summoning the coroner's jury. We agree with you that Chapter 223, Section 2, Laws of 1955, now provides that the only fees that the constable can collect are those allowed by law for service of process and mileage to sheriffs.

We further agree that there is no specific provision in the fee schedule for sheriffs providing for the summoning and attending of a coroner's jury. See Section 15-40-18 to 15-40-21, N.M.S.A., 1953.

We find that Section 36-17-2, N.M.S.A., 1953 Compilation, provides that a coroner's jury shall be summoned by the constable verbally by an order of the Justice of the Peace. Under the provisions of Section 15-40-18, N.M.S.A., 1953, a sheriff is allowed \$ 1.00 for serving an order or a summons, and we think this should be the fee that a constable should receive for calling the coroner's jury, inasmuch, as he is serving a summons under the authority of a Justice of the Peace when such coroner's jury is called.

We are therefore of the opinion that a constable is entitled to the sum of \$ 1.00 for the summoning of an entire coroner's jury under the provisions of Section 36-17-2, N.M.S.A., 1953 Compilation.

You ask the further question whether such constable should be allowed an additional fee for his attendance at the coroner's inquest. It is to be noted that Chapter 223, Section 2, Laws of 1955, only allows fees to the constable which are allowed by law to a sheriff for service of process and mileage.

It is therefore our opinion that it is only when there is service of process and mileage involved that a constable can collect fees. The statute does not contemplate the receiving of money for attendance at a coroner's inquest. Therefore, we are of the opinion that the constable is not entitled to any fee for his attendance at such an inquest.

You next ask the question as to what procedure should be followed for a constable to collect fees for summoning and attending an inquest where such constable has not been paid for the services since January 1, 1955.

It is apparent that some of these fees will be due from a fiscal year which has been closed. As to these fees the only way of collection that we know would be to file suit to secure a judgment against the county for the amount of such fees. As to fees due for the current year, they could be paid by filing a claim for the same.

Trusting we have answered your questions, we remain.

By: Paul L. Billhymer

Assistant Attorney General