

Opinion No. 56-6554

December 3, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Hon. W. T. Scoggin, District Judge, Div. I, Third Judicial District, Las Cruces, New Mexico

In your letter of September 10, 1956, you request an opinion as to what court costs can be collected in criminal cases where the defendant is convicted by a jury. As stated by you, I find two statutes, namely, §§ 41-13-4 and 41-21-3, N.M.S.A., 1953 Compilation, which statutes provide how much can be charged for docket fees, witness fees, etc., in criminal cases in the district courts.

§ 41-13-4 provides as follows:

"In every case wherein there is a conviction, the costs shall be adjudged against the defendant."

The word "costs" in the above quoted statute undoubtedly means incidental costs, or those necessary costs spent by the State in the prosecution of the case.

On page 694 of Corpus Juris Secundum, Volume 20, is found the following:

"The defendant is liable only for such items of cost as are provided for by statute. The costs must bear a true relation to the expenses of the prosecution and must be such as were actually, apparently, or probably necessary."

You have listed the following items for which you have had your clerk collect in cases where a man has been convicted by a jury: jury meals, bailiffs, docket fees, Justice of the Peace, sheriff's costs, witness fees, jury mileage and witness mileage.

Witness fees, witness mileage, docket fees and Justice of the Peace fees, I find are necessary and incidental costs that can be collected as court costs.

In 20 CJS, 695, under subsection (b), Witness Fees and Expenses, is found the following:

"Fees and expenses of necessary witnesses may be taxed as costs against the defendant, subject to statutory limitations.

"Fees of witnesses for the prosecution are taxable in cases where defendant is liable for the costs of the prosecution especially under statutes which expressly so provide . . ."

§ 41-21-3, N.M.S.A., 1953 Compilation, lists and itemizes the fees to be charged by clerk of the district court and in this list are included docket fees.

I also find in the case of King County et al v. City of Seattle, 80 P. 2d 838, that the Supreme Court of the State of Washington held that statutory schedule of fees chargeable as court costs is applicable to both criminal and civil cases.

Justice of the Peace court fees are also necessary and incidental court costs which are proper items to charge as court costs by district courts; however, under § 36-19-1, N.M.S.A., 1953 Compilation, Justices of the Peace are limited to \$ 5.00 and no more for each civil or criminal case.

Concerning jury fees, jury mileage, jury meals, bailiffs' mileage and sheriffs' costs, we believe that the word "costs", in § 41-13-4, N.M.S.A., 1953 Compilation, is broad enough to cover all costs. In the absence of a specific statute detailing what are proper items of cost in New Mexico or in the absence of a New Mexico Supreme Court case saying that jury fees, jury mileage, jury meals, bailiffs' mileage and sheriffs' costs are not proper items of costs, we believe that same can continue to be charged as proper items of court costs.

In view of the foregoing statutes and authorities, witness fees, witness mileage, docket fees and Justice of the Peace fees, are necessary and incidental costs and are proper items to be collected as court costs.

It is further our opinion that the word "costs" in § 41-13-4, N.M.S.A., is broad enough to cover jury fees, jury mileage, jury meals, bailiffs' mileage and sheriffs' costs as proper items of court costs in the absence of authority to the contrary.

Trusting this fully answers your inquiries, I remain

By Hilario Rubio

Assistant Attorney General