

Opinion No. 56-6560

December 14, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. C. Chase, Jr., District Attorney, Third Judicial District, Las Cruces, New Mexico

In reply to your letter of October 31, 1956, in which you raise the following question:

"Is it permissible for a Justice of the Peace to waive all or any portion of his costs in the filing of a criminal matter?"

we take to actually mean:

"Is it permissible for a Justice of the Peace to waive **the assessing** of all or any portion of his costs in the filing of a criminal matter?" (Emphasis supplied).

the following is submitted for your consideration.

Having reference to the old law in which a comprehensive schedule of costs or fees was set forth, and employing the rule of statutory construction which provides that the old law may be used as a guide and aid in interpreting the new, it would appear that the Legislature intended by the law of 1955, see § 36-19-1, 19, 1955 Pocket Supplement, to provide one fee of a certain amount for both civil and criminal cases.

Keeping in mind the words of the statute, which provides:

"No fees, other than those herein provided, shall be charged or collected,"

and the early case of *Jaramillo v. Romero*, 1 N.M. 190, wherein it pointed out that justices of the peace have no power beyond those expressly conferred upon them, it is the opinion of this office that a justice of the peace may not waive the assessing of his costs or fee in the filing of a criminal matter. This would also be applicable to filing of civil matters.

The fact that the justice of the peace may not waive the assessing of the costs in the initial instance does not mean that he may not waive the reimbursement to him by the county for money owed, as provided in § 36-19-18, New Mexico Statutes, 1953, Annotated.

Trusting we have fully answered your inquiry, we remain

By Harry E. Stowers, Jr.

Assistant Attorney General