

## **Opinion No. 57-135**

June 17, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Honorable George T. Reynolds, District Attorney, Eighth Judicial District, Taos, New Mexico

### **QUESTIONS**

#### QUESTIONS

1. The amount of the filing fee in District Courts?
2. Its proper distribution?

#### CONCLUSION

1. \$ 12.50
2. \$ 6.25 to the Court Fund; \$ 5.00 to the Judges Retirement Fund; \$ 1.25 to the New Mexico Compilation Fund.

### **OPINION**

#### ANALYSIS

Several Statutes, including a 1957 enactment bear upon the problems presented in your request. These Statutes must be read together and each must be given effect in order to answer the questions.

Laws 1957, Chapter 198, amended Section 5-5-25, N.M.S.A., 1953 Compilation, to read as follows, insofar as this question is concerned:

"The several clerks of the district courts shall segregate the sum of Five dollars (\$ 5.00) from each eleven dollars and twenty-five cents (11.25) docket fee provided to be paid under the provisions of law relating to payment of docket fees in district courts and shall credit said sum to a fund to be designated 'Judges' Retirement Fund.' Within ten days after the first day of each month the said clerks shall pay over to the county treasurer all accumulations to said 'Judges' Retirement Fund,' and the county treasurer shall remit to the state treasurer within thirty days all such funds. The state treasurer shall upon receipt of said retirement funds credit the same to a fund in his office to be designated 'Judges' Retirement Fund.' Any portion of said 'judges' retirement fund' not required to

be disbursed as herein provided may be invested by the state treasurer as other funds of the state of New Mexico are invested."

"Section 2. Section 16-3-53 New Mexico Statutes Anno tated, 1953 Compilation (being Laws 1919, Chapter 149, Section 1, as amended) is amended to read:

"16-3-53. FEES OF THE DISTRICT COURTS. -- Clerks of the district courts shall be entitled to receive the following fees in civil matters: For docketing each cause, whether original, by appeal or transfer from any inferior court, to be paid by the party bringing the suit or docketing the same, in addition to the fee levied by section 4, chapter 14 of the Laws of 1934, and in addition to any fee or fees now or hereafter to be levied for any special purpose, eleven dollars and twenty-five cents (\$ 11.25). Provided, however, that this shall not apply to appeals from the justice of the peace courts, which shall remain at five dollars (\$ 5.00)."

The procedure for the clerk to follow in paying the \$ 5.00 toward Judges retirement is self contained in this Statute.

Section 16-3-56, N.M.S.A., 1953 Compilation, reads as follows:

"All fees and commissions earned and collected by clerks of the district courts as aforesaid, excepting fees collected under section 3 (16-3-54) herein, shall within ten (10) days after the first day of each month, be paid over to the county treasurer of the county wherein the same have been earned, and prior to the first day of January, 1920, such fees shall be placed to the credit of the salary fund of said county, and thereafter shall be placed to the credit of the court funds of said county."

In our opinion such section when taken in connection with the provisions of Chapter 198 of the Laws of 1957, together with one other section of law hereinafter commented upon requires that \$ 6.25 of the \$ 12.50 fee shall be paid to the County Treasurer and thereafter credited by him to the Court Fund of the County.

Section 1-1-8, N.M.S.A., 1953 Compilation, reads as follows:

"There is hereby levied a fee of \$ 1.25 upon each and every civil action filed in the office of the clerk of the various district courts of the state of New Mexico, upon which a docket fee is now required to be paid, which fee shall be paid to the clerk of the various district courts at the time of filing of such action by the party filing the same. Said \$ 1.25 fee shall not be in addition to the fee now imposed by Laws of 1947, chapter 181, section 8 (1-3-8), but shall be a continuation thereof, it being the express intent of the legislature that only one fee of \$ 1.25 is to be levied and collected.

"Fees so collected shall be kept by said clerk in a separate fund and remitted to the state treasurer on the first day of each month. The treasurer shall credit amounts so received to the New Mexico compilation fund. From the effective date of this act, the amounts so received shall not be credited to the New Mexico digest fund."

We believe that said section clearly demands an additional \$ 1.25 over and above the \$ 11.25 set forth in Chapter 198, Laws 1957, which \$ 1.25 should be disposed of as set forth in Section 1-1-8, supra.

In brief, it is our opinion that the above three provisions of law when taken together require that a filing fee of \$ 12.50 be required, and that the disposition thereof be effected as set forth in said sections.