

## Opinion No. 57-207

August 22, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,  
Assistant Attorney General

**TO:** Mr. Charles D. Harris, Special Assistant Attorney General, 404 J. P. White Building,  
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### QUESTION

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May a sheriff or his duly appointed deputies collect service of process fees from the county or State?

#### CONCLUSION

No.

### OPINION

#### ANALYSIS

Considering generally the early common law, we find at **47 Am. Jur.**, 886, the following:

"Under the English law a sheriff was bound to perform his duty gratuitously unless by act of Parliament he was given the right to collect fees. At an early date, however, statutes gave sheriffs in England poundage based on a percentage. In this country the right to compensation is largely statutory, and such statutes, being in derogation of the common law, are strictly construed."

The New Mexico Supreme Court in **State ex rel Peck vs. Velarde**, 39 N.M. 179, 43 P. 2d 377, discussed, by way of dicta, the subject of service fees and said:

"We have heretofore referred to what the sheriff is required to collect from litigants incident to the service of process. And we discover in the 1915 Act, (Section 33-3203 (15-43-11) for the first time what the county is to pay the sheriff as incident to the service of process, i.e., 'all traveling expenses actually and necessarily incurred \* \* \* while engaged in the service of criminal process issued out of the Supreme Court or a district court. \* \* \* The actual expense incurred in or about the service of civil process shall likewise be paid:

**"Apparently the sheriff cannot collect from the county service fees and mileage for the service of process issued on behalf of the county or state. To such extent**

Section 33-4426 (Act of 1899) (15-40-21) was modified by section 33-32-3, (15-43-11) 'warrants', enumerated in section 33-4426 (15-40-21) as criminal process, would be an illustration of this." (Emphasis supplied.)

In view of the absence of specific authorization to charge process and mileage fees except where such process is issued in behalf of the Supreme Court and district courts as provided, it is our opinion that a sheriff or his deputies may not collect service fees and mileage for service issued on behalf of the State