

Opinion No. 60-84

May 6, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Paul W. Robinson District Attorney Second Judicial District County Court House Albuquerque, New Mexico/ Attention: Fred M. Toler, Executive Director Attention: Fred M. Toler, Executive Director. Attention: Benjamin F. Dick, Assistant

QUESTION

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1. From whom does a constable collect his fees for serving a misdemeanor warrant in a criminal case?
2. If a defendant is committed to jail, who pays the constable's fees?
3. If a defendant is drunk at the time of arrest, is placed in jail until he becomes sober, is subsequently brought from jail to the Justice of the Peace Court, is convicted, and is returned to jail, to what fees is the constable entitled and from whom should he collect them?

CONCLUSIONS

1. County Treasurer.
2. County Treasurer.
3. The constable is entitled to fees for all services listed in § 15-40-18, N.M.S.A., 1953 Comp., Pocket Supp., and should collect them from the general county funds of the county wherein the services were rendered.

OPINION

{*446} ANALYSIS

It is clear from a reading of that portion of the New Mexico Statutes governing fees of justices of the peace and constables (§§ 36-19-1 through 36-19-24, N.M.S.A., 1953 Comp. and Pocket Supp.) that these are precinct officers of the county within which their precincts are located. In prescribing the fees to be paid constables, § 36-19-2, N.M.S.A., 1953 Comp., Pocket Supp., declares that:

"Constables shall hereafter be allowed to demand and receive the following fees, to-wit: The same fees as are allowed by law for service of process and mileage by sheriffs. No other fees than those herein provided for shall be charged or collected."

Section 15-40-18, N.M.S.A., 1953 Comp., Pocket Supp., lists in detail the fees which may be charged by sheriffs. That section declares in part that such fees "shall be paid sheriffs out of the general county funds of the county wherein the services were rendered . . ." It is our conclusion that the fees for all services listed as being compensable will be paid from the general county funds of the appropriate county.

Question No. 3 further poses the question as to what fees the constable is entitled to under the facts stated. The answer to that question would be controlled by said § 15-40-18 and by the actual services performed by the constable taking into consideration the fact that the constable would not be compensated for duties actually performed by a sheriff.

By: F. Harlan Flint

Assistant Attorney General