

Opinion No. 61-66

July 24, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General F. Harlan Flint, Assistant Attorney General

TO: Mr. Robert D. Castner, State Auditor, State Capitol Building, Santa Fe, New Mexico

QUESTION

FACTS

A person is found guilty of a misdemeanor by a Justice of the Peace and is assessed for a fine and \$ 5.00 court costs. Being unable to pay either fine or costs the individual is committed to jail to serve sufficient time to extinguish the fine and costs. Before this required period of confinement has been completed, an interested party appears and offers to pay the amount of fine and costs still due.

QUESTION

In determining how to distribute the amount so collected between fine and costs, should the time served in confinement be credited to the fine or to the costs?

CONCLUSION

Time served should be credited to the fine.

OPINION

ANALYSIS

It is quite possible that the New Mexico Legislature has never had its attention directed to the specific question herein considered. There are only two sections of the statutes which appear to have any bearing on the problem. Neither of them clearly indicates a legislative intent to solve it. The first is Section 36-19-18, N.M.S.A., 1953 Compilation as amended, being Laws 1961, Chapter 105, which provides:

"The county treasurer shall pay the court costs allowed by law to any justice of the peace in the county who docket a criminal case upon the complaint of a county or state law enforcement agency. If the defendant is found guilty, the justice of the peace shall attempt to recover the costs from him and any costs recovered shall be paid to the county treasurer."

It is apparent that while the county pays costs in every case, the justice of the peace is under an obligation to collect costs from the defendant, if it is possible, and remit them

to the county. This obligation would require the judge to collect costs from the amount tendered in satisfaction of unpaid fines and costs, and remit that amount to the county treasurer.

The second statutory provision bearing on this problem is Section 42-2-9, N.M.S.A., 1953 Compilation. This section was amended by Chapter 48, Laws 1961. As pertinent here, that amendment reads as follows:

"A. Whenever any person is committed to prison for nonpayment of any fine or costs, or both, he shall be credited with five dollars (\$ 5.00) a day in reduction of the fine. When the person has remained imprisoned a sufficient length of time to extinguish the fine or costs, or both, computed at this rate, the officer having the prisoner in custody shall discharge him from custody under commitment."

When a person is brought before the justice of the peace after serving part of the time necessary to extinguish fines and costs, it is our view that the justice should credit the time served against the amount of the fine. For example, if such person had been assessed \$ 100.00 fine and \$ 5.00 costs and has served 5 days, the \$ 25.00 credit for jail time should be allocated to the \$ 100.00 fine. Therefore \$ 75.00 in fine and \$ 5.00 costs would remain payable before discharge of the prisoner. While there is little within the above-quoted portion of Section 42-2-9 to guide us to this result we feel it to be the proper interpretation. It will be noted that the first sentence quoted declares that a person so imprisoned will be credited with \$ 5.00 a day in reduction of the **fine**. The second sentence then provides that when such person has served sufficient time to extinguish both fine **and costs** he shall be discharged. This choice of words indicates a possible intent to require time served to be credited first to fines due and second to costs due. In the absence of any other statutory guidance in this regard, it is the opinion of this office that the above-described method of allocation is proper.