

Opinion No. 61-74

August 11, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

TO: Mr. Charles L. Craven, Assistant District Attorney, San Juan County Courthouse, Aztec, New Mexico

QUESTION

QUESTION

What is the correct fee to be paid to the clerk of the District Court upon docketing a civil appeal from a Justice of the Peace Court?

CONCLUSION

\$ 6.25.

OPINION

ANALYSIS

Section 36-18-5, N.M.S.A., 1953 Compilation provides that a docket fee of five dollars (\$ 5.00) and no more shall be paid to the Clerk of the District Court upon docketing a civil appeals from a Justice of the Peace Court.

The same figure of five dollars (\$ 5.00) is included in Section 16-3-53, N.M.S.A., 1953 Compilation, prescribing fees of the Clerks of the District Courts.

Section 1-3-8, N.M.S.A., 1953 Compilation prescribed an additional fee of \$ 1.25 upon every civil action filed in the District Courts upon which a docket fee is required to be paid. This fee was payable to the New Mexico Digest fund to be used to repay debentures issued to finance the New Mexico Digest. The fee was to be discontinued when the debentures were retired and when sufficient funds were accumulated to pay the expense of pocket parts for five years. This has been accomplished, and the fee for the Digest discontinued.

However, Section 1-1-8, N.M.S.A., 1953 Compilation, levied a fee of \$ 1.25 upon every civil action filed in the District Courts upon which a docket fee is now required to be paid. It was provided that this fee was not in addition to the fee to pay for the Digest, but was to be a continuation of that fee, and was to be paid into the New Mexico Compilation fund to pay the expenses of compiling and printing the 1953 Compilation of New Mexico Statutes.

The same question that you raise here was raised in connection with an additional fee imposed by Chapter 191, Laws of 1941 to pay for the 1941 Compilation of New Mexico Statutes, and the fee imposed by Chapter 14, Laws of 1934 to help pay construction costs of the Supreme Court Building. Those questions were considered in Attorney General's Opinion No. 39-27, October 22, 1941.

It was held that the fee imposed by the 1934 law did not apply to appeals docketed in the District Courts, because the fee was only applicable to cases **filed** in the District Courts. This language was construed to include only cases filed originally in the District Courts.

The 1941 law, however, imposed the additional fee on all cases filed in the District Courts **upon which a docket fee is now required to be paid**. This language was held to be broader. Since a docket fee is required when filing a civil appeal from a Justice of the Peace Court, it was held that the additional fee applied to such appeals.

The 1953 law (Section 1-1-8) uses the same language as the 1941 law; the additional fee is imposed on every civil action filed in the District Courts **upon which a docket fee is required to be paid**. We have already seen that a docket fee is required to be paid upon docketing an appeal from a Justice of the Peace Court.

Therefore, it is our opinion that the correct fee to be paid to the Clerks of the District Courts upon docketing a civil appeal from a Justice of the Peace Court is six dollars and twenty five cents (\$ 6.25).

We might observe that there is no cut-off date for the additional fee levied by Section 1-1-8. The compilation fund is a continuing fund.