Opinion No. 62-10

January 19, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A. Donnelly, Assistant Attorney General

TO: Mrs. Mae Hood, Clerk of the District Court, Curry County Court House, Clovis, New Mexico

QUESTION

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What is the fee chargeable for docketing cases in the district courts which have been appealed from municipal courts?

CONCLUSION

See analysis.

OPINION

ANALYSIS

Section 38-1-1, N.M.S.A., 1953 Comp. (PS), specifically provides for the right of appeal from the judgment of any municipal court by both the municipality or defendant to the district court. This section provides in part as follows:

"Appeals by the plaintiff or defendant as hereinafter provided shall be allowed from the judgment of any municipality."

In addition to the above, Section 38-1-8 and Section 38-1-14, N.M.S.A., 1953 Comp., as amended, refer to the manner and process by which an appeal may be taken to the district court from the judgment of a municipal court.

Although the above statutes specify that appeals from municipal courts to the district court are allowed, no specific statutory reference has been enacted by the Legislature which expressly spells out the amount chargeable in the district court for docketing cases which have been appealed from municipal courts. Consequently the answer to your question above involves a consideration of several pertinent statutes.

Section 38-1-12, N.M.S.A., 1953 Comp., provides that in instances wherein a municipality itself shall appeal the decision of a municipal court, no costs are to be assessed against the municipality. This section specifies that:

"The municipality shall have free process in the district court in all cases of appeals for violations of municipal ordinances, and in no case shall any costs be assessed against the municipality in such cases."

Under the provision of Section 16 - 3 - 53, N.M.S.A., 1953 Comp., reference is made to the fees chargeable by the clerks of the district court in docketing cases appealed from any interior court in "civil matters". This section sets out in applicable part:

"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 [Vol. 2, Appx. Law 2.1], 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)."

Section 41-21-3, N.M.S.A., 1953 Comp., also refers to the fees which clerks of the district courts are entitled to receive for docketing cases filed therein. This section specifies in part:

"Clerks of the district courts shall be entitled to receive: For docketing each cause, to be charged but once, two dollars [$ 2.00]; . . ."

This section would appear to have application to appeals taken to district courts from municipal courts in instances other than cases involving "civil matters" which are governed by provisions of Section 16-3-53, N.M.S.A., 1953 Comp.

Section 36-18-9, N.M.S.A., 1953 Comp., also refers to the docket fees chargeable in the district court for cases filed "originally in their offices," or from cases appealed from a justice of the peace court, probate court or board of county commissioners. However, under the wording of this section, it has no bearing upon the docket fee for appeals taken from municipal courts.

Two other statutory sections, Section 36-18-5 and Section 36-18-24, N.M.S.A., 1953 Comp., specify the docket fee for docketing appeals in the district courts. However, these sections refer specifically to appeals taken from justice of the peace courts and have no application to appeals from municipal courts.

In our prior Attorney General Opinions, No. 61-105, dated October 13, 1961, and No. 61-74, dated August 11, 1961, this office considered the proper fee for docketing appeals in the district court taken from justice of the peace courts, and concluded that the fee in civil cases was $ 6.25, and in criminal cases was $ 2.50. The statutes so construed in these opinions do not lend the same interpretation to appeals taken from municipal courts since they refer in applicable part specifically to justice of the peace courts.

As may be seen by the examination of the above statutes, five specific statutes refer to the amount of docket fee chargeable in the district courts for appeals docketed therein; however, no express reference is made as to appeals from municipal courts. Thus, an answer to your question requires a determination of which of the above statutes, if any, has specific application to the amount of docket fees payable to the district court clerk in appeals taken by municipal courts.

Both Section 16-3-53, N.M.S.A., 1953 Comp., as amended, and Section 36-18-9, N.M.S.A., 1953 Comp., make reference to the docket fees chargeable in district courts in "civil" cases or matters. Section 16-3-53, supra, by virtue of its later enactment supersedes in "civil matters" all prior legislative enactments prescribing the docket fees chargeable in district courts and appealed from courts of inferior jurisdiction.

By virtue of the language prescribing the amount of the docket fees for civil cases docketed in the district courts from "any inferior court" specified in Section 16-3-53, N.M.S.A., 1953 Comp., it is necessary to consider also herein whether an appeal docketed from a municipal court is essentially a "civil matter" within the meaning and application of the above section so as to be governed by the fee specified therein. It is therefore evident that if appeals taken from municipal courts involving violations of municipal ordinances are deemed "civil" then the provisions of Section 16-3-53, N.M.S.A., 1953 Comp., would be controlling as to the docket fee properly chargeable, however, if such violations of municipal ordinances are criminal in nature then the provisions of Section 41-21-3, N.M.S.A., 1953 Comp., would appear controlling as to the amount of docket fee payable in the district court for municipal appeals.

The nature of municipal ordinances has been carefully considered many times by the courts, and there is considerable divergence of opinion between jurisdictions in attempting to determine whether proceedings involving the violation of municipal ordinances are civil or criminal in nature or whether dependent upon the ordinance involved, such may be both criminal in nature and civil. This problem is stated succinctly in 62 C.J.S., "Municipal Corporations," Section 315, at pages 665-666:

"The character of the proceedings for violation of municipal ordinances or regulations is variously viewed by the courts. Such proceedings have been referred to as civil, and such proceedings have been viewed as quasi-civil, criminal, and quasi-criminal. It has also been said that such proceedings may be considered criminal from some points of view, and also civil from other points of view. Partaking of some of the features of each, the similitude to either is not complete. In pleading they are more nearly like civil actions, but in their effects and consequences they more nearly resemble criminal proceedings. They are like criminal cases in many respects. The action is a criminal action in substance and purpose, and partly civil and partly criminal in the practice governing it. In so far as it authorizes the imposition of a penalty it partakes of the nature of a criminal act."

In McQuillen, "Municipal Corporations", 3rd Ed., Vol. 9, Sec. 27.06, at pages 559-561, it is stated:

"Sometimes the action is regarded as criminal, especially where the offense constitutes a misdemeanor under the laws of the state. Inasmuch as a proceeding in the name of a city to recover a penalty for the breach of an ordinance involves some of the ideas, terminology and machinery of the criminal law, such proceeding is a criminal one from some points of view, but it is also a civil proceeding from other viewpoints. As aptly stated by a learned judge: 'The best the law has been able to do is to call it civil or quasi-criminal in character.' Such proceeding 'is civil in form and quasi-criminal in character. It is governed by the rules of pleading applicable to civil cases, but if it were solely civil no fine or imprisonment could be inflicted. It is therefore a quasi-civil and criminal action. Partaking of some of the features of each, its similitude to either is not complete. In pleading it is more like a civil action, but in its effect and consequences it more nearly resembles a criminal proceeding.'"

The New Mexico Supreme Court in considering the nature of proceedings for the violation of municipal ordinances has recognized that dependent upon the nature of the municipal ordinance and the penalty specified by such ordinance for its violation, the proceeding against the violator may be either civil, or quasi-criminal in nature.

In **City of Tucumcari v. Belmore,** 18 N.M. 331, 137 P. 585, the Court considered the nature of an action or proceeding for the violation of a municipal ordinance. In this case the Court reviewed a city ordinance of the City of Tucumcari prohibiting the keeping of wooden buildings within prescribed fire limits of the city. The Court, although the entire ordinance was not before the Court, stated that a proceeding for the violation of such a municipal ordinance was civil and not criminal. The Court stated in this case:

"The assumption that the proceedings are civil and not criminal is based upon the form of the judgment, it being an ordinary judgment for money in the amount of a fine, which the Court assessed. No imprisonment is imposed, nor is any provided for as a means of collection of the judgment. The nature of the act charged against the defendant is such as to show that it is not a crime in any sense, is not punishable by any general law of the State, but relates solely to a local regulation of the City, for the safety and welfare of its inhabitants. **Under all of the authorities, at least the great weight of authorities, such proceedings under such circumstances are civil and not criminal.** 2 Dillon Munic. Corp. (5th ed.), secs. 749, 750; 3 McQuillen Munic. Corp., sec. 1030; Section 2407, C.L. 1897, provides for two forms of proceedings for the violation of city ordinances, viz: -- one civil in form and providing that the first process shall be a summons; the other a warrant for the arrest of the offender, based upon affidavit." (Emphasis supplied).

In **City of Clovis v. Curry,** 33 N.M. 222, 264 P. 956, the New Mexico Supreme Court held that a municipal ordinance imposing a fine and also imprisonment for the violation of such ordinance, authorized proceedings criminal in their nature, or quasi-criminal. In this case the Court quoted Ann. Cas. 1917A, page 330, wherein the case of **Tucumcari v. Belmore,** supra, was discussed. The Court stated:

"There is a very comprehensive case note in Ann. Cas. 1917 A, p. 330, under the title, 'Nature of Action or Proceeding for Violation of Municipal Ordinance,' where the variant views and decisions are presented. The case of Tucumcari v. Belmore, 18 N.M. 331, 137 P. 585, is there noted, and the note writer correctly says that the court assumed upon the circumstances which appeared therein that a proceeding for the violation of a municipal ordinance was civil and not criminal. The assumption was based on the fact that the ordinance was not before the court for its consideration, on the form of the judgment, it being an ordinary judgment for money in the amount of a fine, which the lower court assessed, on the fact that no imprisonment was imposed, nor was any provided for as a means of collecting the indebtedness, and on the fact that the nature of the act charged against the defendant was such as to show that it was not a crime in any sense, and that it was not punishable by any general law of the state, but related solely to a local regulation of the city (prohibiting wooden buildings within prescribed fire limits) for the safety and welfare of its inhabitants. Some of these distinguishing elements will be found considered in other jurisdictions mentioned in the case note heretofore referred to. **It will be observed from the portion of the ordinance quoted that a different situation is presented in the case at bar. The appellant would have been subject for the violation of this ordinance to a fine and also an imprisonment, or both, for the first offense, and, for the second or subsequent offense, no discretion is left to the court, but both fine and imprisonment must be imposed by the court.** Under the ordinance in question, most of the acts prohibited are also punishable by the general law of the state, and it may be remarked by the prohibition laws of the federal government." (Emphasis supplied).

The Court in distinguishing the proceeding for the violation of the municipal ordinance under consideration from the type of proceeding present in the **Belmore** case, noted that a different situation was presented due to the manner in which the offense was charged, and because of the prescribed penalty to which a person would be subjected for the violation of such municipal ordinance. The Court in **City of Clovis v. Curry,** supra, also stated:

"In our opinion the ordinance in question attempts to authorize proceedings criminal in their nature, or quasi-criminal."

Based upon the announced distinctions stated by the New Mexico Supreme Court in **City of Tucumcari v. Belmore,** supra, and **City of Clovis v. Curry,** supra, it is evident that a proceeding to enforce a violation of a municipal ordinance may be recognized as either a "civil" proceeding in nature or a proceeding "quasi-criminal" in nature, dependent upon the penalty prescribed by the municipal ordinance and the manner in which the proceeding was initiated.

As observed above, five specific statutes refer to the amount of docket fees chargeable in the district courts for appeals docketed therein. These five statutes, Sections 16-3-53, 36-18-5, 36-18-9, 36-18-24, and 41-21-3, N.M.S.A., 1953 Comp., inter-conflict and repeal in some instance by implication the provisions contained in the earlier enacted statutes specifying the amount of docket fees chargeable in the district courts. No single

statute specifies the proper docket fee chargeable by the district clerks for both appeals from municipal court proceedings which are "civil" in nature, and appeals from municipal court proceedings which are deemed "quasi-criminal" in nature.

A careful examination of the above authorities indicates that in appeals from municipal courts involving proceedings which are "civil" in nature, Section 16-3-53, N.M.S.A., 1953 Comp., is the applicable statute governing the docket fee chargeable in the district court. In appeals from municipal courts involving proceedings which are "quasi-criminal" in nature, the provisions of Section 41-21-3, N.M.S.A., 1953 Comp., would be controlling as to the amount of docket fee to be imposed.

Section 16-3-53, N.M.S.A., 1953 Comp., referred to above, specifies that in "civil matters" clerks of the district courts shall be entitled to receive for docketing each cause from any "inferior court" the sum of $ 11.25, in addition to the fee levied by Section 4, Chapter 14, of the Laws of 1934 (Vol. 2, Appx., Law 2.1) which is $ 1.25. Thus, in civil matters the docket fee for appeals from municipal courts would total $ 12.50 in amount.

In cases involving appeals from a municipal court and which are not strictly civil, but which are proceedings criminal in their nature or quasi-criminal, the docket fee in the district court for such cases would be $ 2.00, as specified under the provisions of Section 41-21-3, N.M.S.A., 1953 Compilation.

We readily recognize the administrative difficulty which such interpretation casts upon the clerks of the district courts in determining whether cases appealed from municipal courts are proceedings "civil" in nature or proceedings "quasi-criminal in nature; however, inquiry by this office as to present docket fees now being charged by the various clerks of the district court, indicates a great divergency and discrepancy in the amounts being charged in the different judicial districts, and reveals the difficulty which such officials have encountered in interpreting the number of conflicting and archaic statutes left unrepealed. We point out to the Legislature for its consideration in affording relief this difficult administrative problem which faces district court clerks in determining the proper docket fees chargeable.

In determining whether or not an appeal docketed in the district court from a municipal court is "civil" or "quasi-criminal" in nature, the Supreme Court in the **Belmore** case, supra, stated that there are two forms of proceedings for the violation of city ordinances, one civil in form and providing that the first process shall be a summons, the other a warrant for the arrest of the offender. The Court also indicated, in addition, that if the penalty for the violation of the ordinance would subject the violator to a fine and imprisonment or to imprisonment for the non-payment of a fine, then the ordinance in question authorizes proceedings criminal or quasi-criminal in nature.

We therefor conclude, based upon a careful study and interpretation of the above statutes and decisions, that except in instances where a municipality dockets an appeal pursuant to the provisions of Section 38-1-12, N.M.S.A., 1953 Comp., specifying that no costs shall be assessed against a municipality, that the proper docket fee chargeable in

the district court for appeals taken from municipal courts in cases which are "civil" in nature is $ 12.50, and that in all cases wherein an appeal is taken from municipal courts involving proceedings "criminal" or "quasi-criminal" in nature, the docket fee is $ 2.00.