

Opinion No. 75-11

February 12, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Larry D. Coughenour Director Administrative Office of the Courts Supreme Court Building Santa Fe, New Mexico 87501

QUESTIONS

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There is an apparent conflict between Section 36-8-1 (B) and Section 36-10-6, NMSA, 1953 Comp. How may it be resolved?

CONCLUSION

See analysis.

OPINION

{*46} **ANALYSIS**

Section 36-8-1, NMSA, 1953 Comp. reads, in pertinent part:

"A. Each magistrate shall collect the following costs:

* * *

Jury fee, to be collected from the party demanding trial by jury in any civil action at the time the demand is filed or made . . . 15.00.

* * *

B. No other costs or fees shall be charged or collected in the magistrate court."

Section 36-10-6, NMSA, 1953 Comp. (1974 Supp.) reads:

"In each action in the magistrate court in which a jury is summoned, persons summoned for jury service and jurors shall be paid one dollar sixty cents (\$ 1.60) for each hour of service. Such persons shall also be reimbursed for travel from their place of actual residence to the court, when their attendance is ordered and if the travel required to and from their residence is more than five miles, at the rate of ten cents (\$.10) per mile of necessary travel. Such costs shall be taxed against the losing party, except that no costs shall be taxed against the state. All costs collected by the magistrate under this

section shall be remitted to the administrative office of the courts as provided by law, and all jurors shall be paid by the state treasurer in the same manner as other magistrate court expenses are paid."

Prior to amendment, Section 36-10-6 read:

"In each action in the magistrate court in which a jury is summoned, each juror empaneled shall be paid one dollar and fifty cents (\$ 1.50) a day, which shall be taxed against the losing party, except that no costs shall be taxed against the state. All costs collected by the magistrate under this section shall be remitted to the administrative office of the courts as provided by law, and all jurors shall be paid by the state treasurer in the same manner as other magistrate court expenses are paid."

The apparent conflict is that Section 36-8-1 (B) provides that no other costs or fees shall be charged or collected besides the \$ 15.00 jury fee, among others, while Section 36-10-6 provides that additional jury fees are to be {~~47~~} collected by the magistrate.

In construing statutes, courts seek to give effect to the legislative intent. **Trujillo v. Romero**, 82 N.M. 301, 481 P.2d 89 (1971). Statutes should be construed according to the purpose for which they were enacted. **State v. Trujillo**, 85 N.M. 208, 519 P.2d 1079 (Ct. App. 1973). In construing statutes, a court's duty is, so far as practicable, to reconcile different provisions so as to make them consistent, harmonious, and sensible. **State ex rel. Clinton Realty Co. v. Scarborough**, 78 N.M. 132, 429 P.2d 330 (1967). Finally, a statute should be construed, if possible, to give effect to all its provisions so that one part will not destroy another. **Martinez v. Research Park, Inc.**, 75 N.M. 672, 410 P.2d 200 (1965).

The \$ 15.00 jury fee established in Section 36-8-1 (A) seems to be for the purpose of reimbursing the state for its expense in carrying out the various provisions of Section 36-10-3, NMSA, 1953 Comp., and possibly other sections. On the other hand, Section 36-10-6, seems to be for the purpose of paying persons summoned for jury service and persons who actually become jurors for their time and mileage. Although these fees are remitted by the magistrate to the Administrative Office of the Court and jurors are later paid by the State Treasurer, the money paid under Section 36-10-6 is not retained by the State. The intent of the legislature seems to have been that the fees of both sections should be collected by the magistrate court. This is especially true regarding the fees which were the subject of the recent amendment to Section 36-10-6.

Where an adherence to the literal use of words would lead to injustice, absurdity or contradiction, the statute will be construed according to its obvious spirit or reason, even though this requires the rejection of words or the substitution of others. **State v. Nance**, 77 N.M. 39, 419 P.2d 242 (1966). In this case, it seems that Section 36-8-1 (B) should be construed to read that no other costs or fees shall be charged or collected in the magistrate court except those established by Section 36-10-6, as amended.

While these statutes are susceptible of a harmonizing construction, they are confusing. The Administrative Office of the Courts would be well advised to seek an amendment which clarifies the confusion.

By: Bill Primm

Assistant Attorney General