

Opinion No. 80-18

May 5, 1980

OPINION OF: Jeff Bingaman, Attorney General

BY: John F. Kennedy, Assistant Attorney General

TO: Honorable N. Randolph Reese, Presiding Judge, 5th Judicial District, Post Office Box 1619, Hobbs, New Mexico 88240

COSTS

Details appropriate fees to be collected in docketing civil matters in district court; how such fees are to be distributed and the effective dates of such collections and distributions.

QUESTIONS

1. What are the appropriate fees to be collected in docketing civil matters in district court in light of Chapters 136 and 137, Laws 1980 and Sections 12-1-9 NMSA 1978 and 35-15-7 NMSA 1978?
2. How are such fees to be distributed and what are the effective dates of such collections and distributions?

CONCLUSIONS

1. See analysis.
- 2a. See analysis.
- 2b. Chapter 136, Laws 1980 is effective July 1, 1980. Chapter 137, Laws 1980 becomes effective May 14, 1980.

ANALYSIS

1. At issue are the provisions of several statutes relating to the collection and distribution of civil docket fees for the district court. The general provision governing civil docketing fees is Section 34-6-40 NMSA 1978, as amended, which states, in part:

"A. District court clerks shall collect the following fees in civil matters:

docketing an appeal from the magistrate court. . . . \$5.00,

docketing any other cause, whether original or by appeal or transfer from any inferior court. . . . \$40.00.

B. No fees or costs shall be taxed against the state or its political subdivisions."

OPINION

In addition to the civil docket fees listed in Section 34-6-40 the sum of \$2.75 must be collected pursuant to Section 12-1-9 NMSA 1978, and is to be credited to the compilation fund. As indicated by Section 12-1-10 NMSA 1978, this fee constitutes an increase upon the general docket fees collected. Thus, the clerk must collect \$7.75 for magistrate court appeals and \$42.75 for all other actions.

However, Section 34-6-40 is apparently in conflict with Section 35-15-7 NMSA 1978, which specifically imposes a docket fee of \$10.00, rather than \$40.00, on appeals to the district court from judgments of the municipal courts after proceedings relating to municipal ordinance violations. Section 35-15-1 **et seq.**, NMSA 1978 designates a specific statutory procedure and provides for the right of appeal to district court. In resolving a conflict between statutes a general provision will not be regarded as overriding a statute dealing with a particular matter of limited scope. **Waltom v. City of Portales**, 42 N.M. 433, 81 P.2d 58 (1938). Specific statutes prevail regardless of priority of enactment. Opinion of the Attorney General No. 62-13, dated January 24, 1962. Thus, the docket fee of \$10.00 is applicable to appeals from municipal court to district court only when brought from an action enforcing ordinances under Sections 35-15-1, **et seq.** Moreover, the compilation fund docket fee required by Section 12-1-9, would be applicable to such actions as well. Thus, the clerk must collect \$12.75 for appeals from municipal courts to district courts when brought from an action enforcing an ordinance under Section 35-15-1, **et seq.**

2. The additional docket fee of \$2.75 is to be distributed to the New Mexico compilation fund pursuant to the provisions of Section 12-1-9 and applies to all civil actions filed on or after July 1, 1967.

Chapter 137, Laws 1980 which amended the general civil docket fee provision at Section 34-6-40, contained no emergency clause. It was signed into law by Governor King on March 4, 1980 and, thus, its provisions become effective on May 14, 1980.

Section 8 of Chapter 136, Laws 1980 amends Section 10-12-8 NMSA 1978, requiring distribution of \$22.25 from each civil docket fee paid to be credited to the judicial retirement fund. Of course, this provision would apply only to those fees which exceed that sum. Section 17 of Chapter 136 makes this provision effective July 1, 1980.

ATTORNEY GENERAL

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