

## Opinion No. 12-901

June 3, 1912

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Hon. K. K. Scott, District Attorney, Roswell, New Mexico.

### CLERKS' FEES.

Clerk of District Court may charge \$ 2.00 for his services in connection with stenographer's transcript when copy is furnished him and he is not compelled to recopy it.

### OPINION

{\*41} I have today received your letter of the 31st ult., enclosing another from Mr. R. F. Ballard, County Clerk of Chaves County on the subject of what are the proper charges by the clerk of the District Court for his services in preparing and certifying transcript of record for use on appeal to the Supreme Court. Mr. Ballard says that it has been customary to require the appellant, after paying the stenographer for a transcript of the evidence to form the basis of a bill of exceptions, and for additional copies, for the clerk of the court to charge ten cents per folio for the same matter included in the bill of exceptions although he does not actually copy it. He wishes to know what is the correct charge under Section 23 of Chapter 57 of the Laws of 1907.

By that section it is provided that the clerk of the District Court shall be allowed ten cents per folio for making out and certifying a copy of the record and three cents per folio for each additional copy required. Thus far it seems perfectly plain that the clerk is entitled to the ten and three cents per folio for making out and certifying the transcript of record. The next clause however provides that he shall be allowed two dollars for certifying a bill of exceptions which may have been furnished by the stenographer. The party appealing must have paid the stenographer to get that transcript. If no extra copy should be furnished by the stenographer for the use of the clerk in making up the record, I have no doubt that the clerk could properly charge for copying the stenographer's transcript, but it seems equally clear that it is unjust for him to charge for copying that transcript when he does not make the copy at all and my opinion is that the legislature intended to give him only two dollars for his services in connection with the stenographer's transcript when a copy or copies are furnished so that he, the clerk, is not compelled to re-copy that part of the record. The ordinary charge for a certificate and seal is fifty cents but this charge was probably made two dollars because it would be the duty of the clerk to inspect the attached carbon copy furnished sufficiently to see that it is the same as the original filed in the bill of exceptions.

This is the first time that this matter has been specifically called to my attention. Heretofore I had had the impression that the clerk was entitled to charge his ten cents

per folio no matter whether he copied the transcript of the evidence or not, but now that I have examined the statute I am convinced the legislative intent was to {<sup>\*42</sup>} give him only the two dollars for making a sufficient comparison to enable him to certify that the copy was a correct one.

I return Mr. Ballard's letter herewith.