

## Opinion No. 13-1010

April 7, 1913

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

**TO:** Hon. Alexander Read, District Attorney, Santa Fe, N. M.

### **DISTRICT ATTORNEYS.**

District Attorneys should not collect fees from court funds. They should not receive any fees.

### **OPINION**

{\*175} As I have orally explained to you, delay in answering your letter of March 20 has been due to the fact of my absence on official business from Santa Fe and a great accumulation of work during my absence which has kept me exceedingly busy since my return.

Under the decision of the Supreme Court of the case of Territory ex rel Ward vs. Romero, the district attorneys under the state government had no right to receive any fees at all, the court holding in substance that the office was a new one for which no compensation {\*176} had been provided and that no compensation could be received until the legislature should act.

It is true, however, that prior to that decision I had erroneously, as that decision afterwards demonstrated, given an opinion that the old statutes as to compensation would continue in force until displaced by later legislation, and possibly district attorneys may have collected some fees from the court fund before the supreme court acted. As to any such fees taken from the court fund or from any other source, the district attorneys who collected them are to turn them over to the county treasury.

As to the future, I cannot believe it is possible that the legislature intended district attorneys should collect any fees from the court fund and then turn the money over to the county treasurer to be placed in the salary fund, especially in view of the fact that the county treasurer is to take a large part of the court fund for the salary fund. If defendants in cases prosecuted by the district attorney, pay any money to him on account of the statutory fees, then he should turn over those moneys to the county treasurer, and should make a report as required by the last statute. I do not think, however, that he is charged with the duty of receiving such money, but he can with perfect propriety require the payment of all such fees to the clerk of the district court whose duty it will be to keep a record of all such money, and to transmit it to the county treasurer.