

Opinion No. 13-1025

April 23, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Honorable Charles W. G. Ward, District Attorney, Las Vegas, New Mexico.

DISTRICT ATTORNEY FEES.

(Sent to all district attorneys of the state.)

On the question of payment of fees to district attorneys in criminal cases.

OPINION

{*189} I am informed that some differences of opinion have arisen as to the construction of Section 6 of House Bill No. 350, which will be printed as Chapter 54 of the Laws of 1913, and it seems desirable that there should be some uniformity of procedure in the different districts of the state. On March 24, 1913, I wrote a letter to Mr. George E. Remley, District Attorney at Raton, in response to inquiries from him, and I quote from my letter as follows:

"I further agree with you that under the decision of the Supreme Court in the case of State ex rel Ward vs. Eugenio Romero, the district attorneys no longer had any right to receive any fees whatever, but I do not feel certain that those fees were thereby entirely done away with so that they could not be taxed against convicted defendants in criminal cases as a part of the costs. The new law appears to contemplate that there are fees earned by district attorneys, but that all such fees are to be accounted for and paid over to the county treasurers. I cannot believe that it can be the intention of the legislature that the district attorneys should make accounts as they did prior to the organization of the state government, against the court {*190} fund and take money out of that fund to be handed over to the county treasurer to be put into the county salary fund. If this should be done it is quite certain it would require a much larger court fund than we have heretofore had.

"This new act, of course, cannot apply to anything which was done before the state government was organized, and therefore it seems clear that the legislature believed that since the state government came into existence, notwithstanding the above mentioned decision of the supreme court, district attorneys had been collecting fees and commissions on account of official services rendered, and I have been told in an indefinite sort of way that some district attorneys have done this. I think it is very doubtful if anyone has done anything of the kind, but if anyone has, then Section 6 of the act is intelligible as applied to them as far as the past is concerned; but that section appears to contemplate that in the future district attorneys may earn and collect fees and commissions. The district attorneys are required hereafter to keep an account of

fees earned and collected and remit them to the county treasurers, but it is not at all certain that it is the duty of the district attorney to make such collections. Those fees and commissions, I believe, must be only those collected from individuals and that the district attorney has no right to collect anything from the public treasury."

On April 11, the district attorney of the first district presented to the judge of that district, an account against the court fund of the county of Santa Fe, amounting to \$ 525.00 for fees in criminal cases, but the judge disapproved the account and refused to allow it as a charge against the court fund, unless it could be shown that the fees had been paid by the defendants, against whom the same had been adjudged, and paid into the court fund. It will be seen that the judge of that district must have taken the same view of the proper construction of the statute as that expressed in my letter to Mr. Remley.

The matter is now again brought to my attention by the Traveling Auditor, to whom the district attorney of the first district has reported the disallowance of the accounts which he presented, as hereinbefore stated. We would like to be informed as to what, if any, action has been taken in your district upon this particular phase of the possible questions arising under the statute. If nothing has been done as to payments from the court fund, I suggest that you confer with the judge of your district. It is to be hoped that uniformity of procedure can be had throughout the state.

It is very doubtful if there is any way of getting any more of an adjudication in the courts than the mere allowance or disapproval of such accounts. The Constitution gives the Supreme Court "a superintending control over all inferior courts," but it is not at all clear that this includes district courts, which are superior courts of general jurisdiction. The district judge has absolute control over the court fund and his orders relative to that fund appear to be final.

I am sending this letter to each district attorney of the state, except {*191} to the district attorney of the first district, hereinbefore referred to.