

**Opinion No. 16-1742**

February 14, 1916

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

**TO:** Mr. Harry P. Owen, Los Lunas, New Mexico.

**Compensation of counsel other than district attorney or attorney general.**

**OPINION**

{\*312} I have just received your letter of yesterday, which, in effect, is an inquiry as to what meaning can be given to the words "who {\*313} shall receive the fees hereinbefore provided," which appear at the end of Section 1860 concerning the employment of counsel other than the district attorney or attorney general. It seems to me that those words refer only to the latter part of the section concerning cases where the district attorney and his assistant may be disqualified or refuse to prosecute, and not to the earlier part of the section. Still I do not see that we can now give any meaning at all to that language as the provision about fees which was contained in Chapter 22 of the Laws of 1909, is now apparently eliminated by the paragraph in the repealing and saving clause of the Codification, which begins near the foot of page 1665. That provision is that all acts and parts of acts of a general and permanent nature not contained in the Codification, are repealed. It is barely possible that as to this class of cases, the court might resort to the original act of 1909, to ascertain what fees should be paid to the competent person appointed by the court to represent the county or state. There are very few competent persons, however, who would be willing to appear and prosecute in one case for the statutory fees fixed in Section 9 of the act of 1909, the highest of which is \$ 50.00.

I agree with you that the cases are few in which there should be associate counsel, but still there are occasionally such cases.