

Opinion No. 16-1722

January 26, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. J. B. Arellano, Justice of the Peace, Springer, New Mexico.

Justice of the peace cannot collect fees from the county for services in misdemeanor cases.

OPINION

{*295} I have just received your letter of the 24th inst. in which you ask whether you are entitled to collect fees from the county for services in cases other than those rendered at inquests and in felony cases. You call attention to Section 1340 of the Compiled Laws of 1897, which provided that costs should be adjudged against any person convicted as a disorderly person, and if not collected from him, that they should be paid by the county, and in cases where the defendant is not convicted, the costs still should be paid by the county. This had application, while it was in force, only to the cases of conviction of a charge of being a disorderly person under the act of which that section was a part, which was originally passed in 1853. At the present time, however, I am of opinion that that section is no longer a part of our law as I cannot find that it was carried into the new codification enacted by the last legislature, by which it was provided, in the last part thereof, following Section 5901, that all acts and parts of acts of a general and permanent nature not contained in the codification, are repealed.

I know of no other statute which authorizes justices of the peace {*296} to collect fees in criminal cases from the county. Without direct authority of law I do not see any way that the county can be required to pay such costs. This may seem unjust to the justices of the peace, but when they take office they take it subject to the burden of being required to perform some services for which they get no compensation.