

Opinion No. 17-2013

June 30, 1917

BY: HARRY L. PATTON, Attorney General

TO: Hon. A. G. Whittier, State Traveling Auditor, Santa Fe, New Mexico.

Sheriffs Should Collect Fee for Executing Death Penalty and Account for Same

OPINION

I am in receipt of your letter of yesterday's date, asking advice from this office as to whether or not the fee of \$ 100.00 due the Sheriff for executing the death penalty, as provided by Section 1266, Codification of 1915, is properly chargeable against the Sheriff, and as to whether or not such Sheriff should account for the same, the same as other fees.

The section of the statute referred to, which section is a schedule of the various fees payable to the Sheriff, contains the following provision,

"For executing each death warrant, \$ 100.00, to be paid by the State of New Mexico."

Article X, Section 1, of the Constitution, contains the following provision:

"And no County officer shall receive to his own use any fees or emoluments other than the annual salary provided by law, and all fees earned by any officer shall be by him collected and paid into the treasury of the County."

Section 8, Chapter 12, Laws 1915, the same being the County Salary Law, reads, in part, as follows:

"All County officers shall respectively charge and collect all fees, emoluments, mileage, and per diem, heretofore and now, or which hereafter may be authorized by law to be charged and collected for official services rendered by them, and shall keep an accurate and itemized account thereof, and on or before the tenth day of each month pay the same over to the County Treasurer of their respective Counties."

You call my attention to the fact that this fee is paid by the State and not by the County. I do not think that such fact is of any consequence in the construction of this statute. In my opinion, it is part of the fees and emoluments which the statute authorizes the Sheriff to collect. It is in addition to his annual salary. It is the character of fee which chapter 12, Laws 1915, requires the Sheriff to collect and pay over to the County Treasurer. In my opinion, the Sheriff is chargeable with such fee and must account for the same under our Constitution and statutes.