

Opinion No. 19-2361

September 20, 1919

BY: N. D. MEYER, Assistant Attorney General

TO: Mr. Luis Pacheco, Deputy County Clerk, Mora, New Mexico.

Unearned Docket Fees to Be Returned to Litigant.

OPINION

Referring to your oral request for an opinion from this office as to the meaning of Chapter 149 of the Session Laws of 1919 in regard to the provision thereof which states:

"This Act shall apply to all pending litigation provided where cases have been docketed no additional charge shall be made on account of the docket fee."

we beg to advise you as follows:

We have very carefully considered this provision of Chapter 149 and we are persuaded to conclude that no other interpretation can be placed upon said provision other than in cases filed before this law became effective on June 15 of this year and an advance fee deposited, that all the unearned portion of said advance deposit fee should be returned to the litigant who deposited the same.

As an illustration you wished us to state what should be done in case a litigant had deposited an advance fee of ten dollars. In such a case everything over and above what was actually earned before June 15 should be returned to the person who advanced the ten dollars and no further charge should be made except in those cases in which Chapter 149 directs an extra charge. All of the above, of course, applies only to litigation that was pending when this law became effective. Fee charges in all suits instituted after the date that said law became effective are governed by Chapter 149 of the Session Laws 1919.