

Opinion No. 20-2731

November 23, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. A. G. Whittier, State Traveling Auditor, Capitol Building.

Defendants in Criminal Proceedings Not Subject to Pay Docket Fees.

OPINION

In reply to your letter of the 19th instant requesting opinion from this office regarding the authority of District Clerks to demand of defendants in criminal cases a deposit before filing any paper or document for such defendant, we wish to advise you as follows:

The courts universally hold, and our own Supreme Court among them, that costs, in order to be levied and collected in actions in such courts, must be specifically provided for by statute.

In re Marron and Wood, 22 N.M. 501, 165 Pac. 216.

Section 1409, Code 1915, provides for a deposit by defendants "in any civil case," but makes no allusion to defendants in criminal cases, nor is there anything in our statutes which would indicate that defendants in criminal cases would be required to pay a deposit before tendering for filing, any papers involved in the case.

Chapter 149, Laws 1919, provides only for the fees to be received by District Clerks "in civil matters."

In view of the general holding that costs cannot be assessed or collected except by virtue of statutory authority, it is our opinion that defendants in criminal cases need not make a deposit under the circumstances mentioned.