

Opinion No. 24-3778

August 18, 1924

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. James A. French, State Engineer, Santa Fe, New Mexico.

What Fees are Required in Filing With State Engineer a Notice of Intention Under Section 5678 Code of 1915.

OPINION

{*160} The question actually propounded by your letter is whether or not the fees provided by Sub-Sec. A, Sec. 1, Chap. 55, S. L. 1921 are payable when only the Notice of Intention has been filed. We think not. If any fee is chargeable for such notice, we think it would be under Sub-Sec. J of said section. Under this latter subdivision, your office would be entitled to charge whatever fee it deemed "reasonable." Whether you have charged a reasonable fee in the case under consideration, of course, is a matter left entirely for the consideration of your office. It is a matter entirely foreign to any knowledge this office may have on the subject.

The evils of which you speak and flowing from the filing of numerous Notices of Intention for merely speculative purposes and not for the purpose of ultimately, in good faith, filing an Application for Permit and developing and applying the water in conformity with law is, of course, a serious matter. The Notices, however, have no force or virtue unless followed, within the time, by the formal application. The time for filing formal application may be fixed by the State Engineer at such date as he may deem "reasonable." The law appears not to provide for any extension of time for filing the application but in event such application is unacceptable, Sec. 5680, Code 1915 does provide for additional time for refileing the application. However, the original application must be filed within the time designated by the State Engineer and the fees chargeable under Sub-Sec. A of said 1921 Act then become immediately due {*161} and payable. Par. 2, Sub-Sec. J. Sec. 1, Chap. 55, S. L. 1921 provides that "The filing fees provided for in this section shall be deposited with the State Engineer at the time of filing the application * * *."

In any event, the State Engineer would be expected to look after the interests of the State and not extend the time for filing the formal application beyond a reasonable date. If, as an example, the Engineer should allow sixty days for filing the application after the filing of the Notice of Intention, the applicant, under Sec. 5680, Code 1915, might have an additional ninety days within which to complete his application but not for paying the fees provided by said Sub-Sec. A. Then, the evils of which you complain may be largely controlled by not extending the time for filing the formal application beyond that of the "reasonable time."