

Opinion No. 26-3883

April 29, 1926

BY: FRED E. WILSON, Attorney General

TO: Mr. George H. Barrows, Assistant State Comptroller, Tucumcari, N.M.

I have your letter of the 27th instant, inquiring as to whether or not the clerk of the district court should make a charge for preparing and certifying a transcript of judgment.

Section 3079 of the Code of 1915 authorizes the making of a transcript of a money judgment for the purpose of filing same with the county clerk of the county in which any real estate of the judgment debtor is situated. Of course it is the duty of the clerk of the district court to make and certify this transcript. Section 3082 of the Code of 1915 provides that the clerk of the district court shall receive 50 cents for making and certifying each of said transcripts. However, this section is repealed by Chapter 149 of the Session Laws of 1919 by implication. Chapter 149 of the Laws of 1919, provides that the district clerk shall receive \$ 1.00 for making and certifying a transcript of judgment. That portion of Section 3082 relative to the county clerk receiving 50 cents for filing and recording said transcript is not affected by Chapter 149 of the Session Laws of 1919.

You have directed my attention to Opinion No. 2511, rendered March 13th, 1920, by Assistant Attorney General N. D. Meyer, in which he stated that the clerk of the district court is not authorized to make any charge whatever for preparing and certifying a transcript of judgment provided for in Section 3079. I think this opinion is erroneous to that extent. The opinion referred to Section 4 of Chapter 149 of the Session Laws of 1919, which provides that no other or different fees than those above provided shall be made or received in civil matters by clerks of district courts, and any services required of them in civil actions, other than those for which fees are herein provided, shall be without compensation. The writer of the opinion evidently overlooked the fact that the fees referred to as "above provided" did make provision for making and certifying to transcripts of judgments. If there had been no provision in Chapter 149 in reference to making and certifying transcript of judgment, the opinion of Mr. Meyer would have been correct.

Therefore, it is my opinion that clerks of the district courts are authorized to charge \$ 1.00 for making and certifying to transcript of judgments under the authority of Chapter 149, Session Laws of 1919.