

Opinion No. 38-1955

May 17, 1938

BY: FRANK H. PATTON, Attorney General

TO: Mr. M. E. Noble District Attorney Las Vegas, New Mexico

{*235} This is in response to your inquiry of May 13 requesting an opinion as to the proper fees to be charged by district court clerks under the following circumstances: The City of Las Vegas filed a case to foreclose sewer liens against two or three hundred defendants. Some of the defendants have answered and the case is at issue as to them. Others, however, failed to file their answers and separate judgments were taken against them by default. I assume from your letter that the case has not been litigated and that final judgment against the defendants who have answered has not been entered. You wish to know whether or not a fee of \$ 2.50 can be charged for each judgment taken by default.

The pertinent provisions of Section 34-343 of the 1929 Compilation read as follows:

"Clerks of the district courts shall be entitled to receive the following fees in civil matters:

* * * *

"For entering judgment or decree when judgment or decree is taken by default, fifteen cents per folio for each folio in excess of twenty folios.

{*236} "For entering judgment or decree, when the case is at issue, without trial by jury, two dollars and fifty cents:

"Provided, that the judgment or decree does not exceed twenty folios; when the judgment or decree exceeds twenty folios, an additional charge of fifteen cents per folio shall be made for each folio in excess of twenty folios."

It is my opinion that such charges cannot be made. Although separate instruments are in fact entered of record, there can in reality be but one judgment in a given case. The statute above quoted contemplates only one fee for a single judgment. However, I call your attention to the underlined portion of the section. I believe that this part is applicable in the situation here presented. Obviously the litigants cannot, by the simple expedient of filing separate judgments, evade the payment of fees set out therein. This section provides for a fee of \$ 2.50 for the judgment, provided it does not exceed twenty folios. If it does exceed twenty folios, a charge of fifteen cents per folio is to be made. Such being the case, I think it would be entirely proper for the Clerk of the District Court to add the total number of folios when the final judgment is filed and require payment upon that basis.

Trusting that this answers your question, I am

By: RICHARD E. MANSON,

Asst. Atty. Gen.