

## Opinion No. 38-1962

May 25, 1938

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. Owen B. Marron District Attorney Albuquerque, New Mexico

{\*238} I have your letter of May 24th relative to collection of so-called "jail fees" by the sheriff's office and I find that this presents a rather interesting matter.

I doubt seriously if under the present state of our statutory law we have at this time any of these so-called "jail fees." Even if there are jail fees, then I am unable to find what the amounts of same should be.

May I direct your attention to Section 35-3701 of the 1929 Compilation which is a portion of Chapter 9 of the Session Laws of 1891. This section makes drunkenness and disorderly conduct a misdemeanor punishable by fine of not less than five nor more than twenty-five dollars.

Section 35-3702 which mentions jail fees is also directed at drunkenness and disorderly conduct in certain public places and this section is a part of an old law, Chapter XI of the Laws of 1855 and 1856 entitled "An Act Against Persons Who Disturb Good Order."

The 1891 law making drunkenness and disorderly conduct a misdemeanor was Chapter 9 of the Laws of 1891 and is entitled "An Act Licensing the Sale of Intoxicating Liquors and Regulating the Same."

{\*239} While I am familiar with the rule against repeals by implication, I am rather inclined to the view in this instance that the 1891 law making drunkenness and disorderly conduct a misdemeanor, repealed by implication the 1855 and 1856 law in so far as the same subject matter is concerned.

Apparently, as above intimated, there is no statutory authority at the present time for the collection of such jail fees and even though authority did exist for such collection, nevertheless such fees could not be retained by the official and would have to be paid into the county under Sections 33-3206 and 33-3209 of the 1929 Compilation. Also Section 33-3208 is pertinent in that it requires all fees to be paid into the county treasurer.