

Opinion No. 40-3392

January 17, 1940

BY: FILO M. SEDILLO, Attorney General

TO: Miss Pearl V. Dearth, Deputy District Court Clerk, Las Vegas, New Mexico.

{*132} In your letter of January 12 you refer to our Opinion No. 1691, and you inquire whether tax petitions filed by a taxpayer through his individual attorney, but bearing the O.K. of the district attorney, requires merely the payment of the Capitol Addition fee of \$ 2.50 or whether you should require the payment of \$ 10.00 fee for each petition filed.

The Capitol Addition Tax is levied by Section 4, Chapter 14, Laws of 1934, and, of course, is a tax and not a part of the costs.

No doubt you have reference to the filing of a tax petition under Section 141-306, New Mexico Statutes, Annotated, 1929 Compilation.

That section, of course, authorizes the district attorney to file a petition or to permit the filing of a petition without cost to the taxpayer.

Consequently, regardless of whether the district attorney files the petition himself or whether he merely O. K.'s the filing thereof in writing, the necessary fee to be charged is the \$ 2.50 Capitol Addition Tax fee and no more.

By: FRED J. FEDERICI,

Asst. Atty. Gen.