

Opinion No. 43-4335

July 12, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. E. R. Cooper, Assistant District Attorney, Las Vegas, New Mexico

In your letter dated July 10, 1943, you ask whether the fee in a Probate case, filed originally in the District Court, should be \$ 10.00 or the regular fee for District Court cases, which is \$ 11.25 at the present time.

The fees for filing matters in the District Court are set out in Section 16-346 of the New Mexico 1941 Compilation which provides, in part, as follows:

"Clerks of the district courts shall be entitled to receive the following fees in civil matters: For docketing each cause, whether original, by appeal or transfer from any inferior court, to be paid by the party bringing the suit or docketing the same, in addition to the fee levied by section 4, chapter 14 of the Laws of 1934, and in addition to any fee or fees now or hereafter to be levied for any special purpose, seven dollars and fifty cents (\$ 7.50), provided, however, that this shall not apply to appeals from the justice of the peace courts, which shall remain at five dollars (\$ 5.00) * * *"

In connection with the Capitol Addition Building docketing fees provided for in Section 4 of Chapter 14, Special Session Laws of 1934, this office has previously ruled that such fees should be collected on tax petitions for the correction of assessments filed by the taxpayers, as well as on other special proceedings in the nature of civil actions.

Since the above quoted section regarding District Court fees provides for a fee in each cause, whether the matter is filed originally in the District Court or by appeal or transfer from an inferior court, I am of the opinion that a Probate proceeding is in the nature of a civil action, and comes within the definition of civil matters, and therefore would be subject to the regular District Court fee, if filed originally in the District Court, including the additional fee provided for in the 1934 statute above mentioned and also in Section 1-111 of the New Mexico 1941 Compilation.

By C. C. McCULLOH

First Asst. Atty. Gen.