

**Opinion No. 45-4675**

March 8, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{\*35} I have your letter of February 23, 1945 wherein you request an opinion concerning the application of the second item in Section 15-3818 of the 1941 Compilation, which section provides, insofar as it is material to your request, as follows:

"The several sheriffs of this state shall be allowed the following fees and compensations, to-wit:

"For taking and returning every bond required by law, \$ 1.50."

You have requested an opinion concerning whether this provision pertains to criminal cases as well as civil cases.

{\*36} In view of the specific wording of the provision, it is noted that there is no distinction concerning its application to any type of case, but applies to every bond required by law.

The confusion arising concerning the application of this provision is apparently derived from a statement in an Attorney General's opinion found at page 167 of the 1937-1938 Opinions of the Attorney General, wherein it is indicated that the first six items of the above section are to be collected by the Sheriff from litigants in all civil cases; and the opinion further refers to other items pertaining to criminal cases.

The case of State ex rel Peck v. Velarde, 39 N.M. 179, 43 P. (2d) 377, is cited as authority for this holding. However, the particular item involved in this request was not specifically discussed in this opinion and may have been inadvertently included in the group of items which it was held pertained to civil cases. This would appear to be so in view of the fact that the opinion specifically states that the above cited case fully sustains the holding of such opinion.

In view of the fact that such case does not appear to directly or indirectly involve the particular item involved in this opinion, we do not consider such Attorney General opinion as binding, and therefore at this time hold that the second item pertains to criminal as well as civil cases.

By HARRY L. BIGBEE,

Asst. Atty. General