

## **Opinion No. 57-16**

February 4, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Hon. Didio B. Salas, State Senator, New Mexico State Senate, Santa Fe, New Mexico

### **QUESTIONS**

#### QUESTIONS

1. Should the filing fee for County School Superintendent, in primary elections, be determined according to the salary being paid such superintendent at the time of filing?
2. If an excess was paid as a fee, can the same be refunded?

#### CONCLUSIONS

1. Yes.
2. No.

### **OPINION**

#### ANALYSIS

§ 73-5-1, N.M.S.A., 1953 Comp., sets forth the basis for computing the salaries of county school superintendents. § 3-11-45, N.M.S.A., 1953 Comp., 1955 suppl. provides that filing fees in primary elections (which is the particular election in which we are concerned) shall be 3% of the first year's salary for county offices. The question becomes one of determining whether the 3% should be 3% of the salary being paid at the time of filing, or whether it should be 3% of the salary to be paid in the future. In Opinion of the Attorney General, No. 4886, dated April 3, 1946, it was determined that the filing fee for the office of county school superintendent should be based upon the amount of the salary being paid at the time of the filing. Assuming that the required fee of \$ 125.85 was 3% of the salary then being paid the county school superintendent, such sum was the required filing fee.

The foregoing analysis may be somewhat academic, for the very good reason that there is no provision in the law of New Mexico allowing refunds of filing fees previously paid. Opinion of the Attorney General, No. 6407, dated March 14, 1956. Consequently, there is no way to recover a filing fee whether the amount of the sum is correct or not.

Trusting that this fully answers your inquiry, we remain