

Opinion No. 59-193

November 23, 1959

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: The Honorable Paul W. Robinson District Attorney Second Judicial District Second Floor Court House Albuquerque, New Mexico. Attention: Mr. Benjamin F. Dick Assistant District Attorney

QUESTION

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Must justices of the peace file the standardized report provided in § 36-19-22, N.M.S.A., 1953 Compilation (P.S.), and if so, must this report include an itemized list of all civil fees received as well as criminal fees received?

CONCLUSION

Yes.

OPINION

{*297} ANALYSIS

The section to which you refer reads, in part, as follows:

"A. Each justice of the peace **shall** prepare and file a standardized report with the county treasurer and with the county commissioners of their respective counties accompanied by a copy for the Secretary of State on or before the fifth day of each month, **itemizing all fines, fees, costs or public money received.. .**" (Emphasis supplied)

The first portion of your question asks whether all justices of the peace must file this report. A mere reading of the statute provides the answer. The statute uses {*298} construed by our Supreme Court many times with the result that the words "shall prepare and file". The word "shall" has been it is now well settled that the word denotes a command and is not merely permissive in its nature. See **In re Armijo's Will**, 57 N.M. 649, 261 P. 2d 833.

It is, therefore, our view that all justices of the peace must file a standardized report as required by the above section, anything in § 36-19-21, N.M.S.A., 1953 Compilation (P.S.), to the contrary notwithstanding.

Our view is further strengthened by the fact that § 36-19-23, N.M.S.A., 1953 Compilation (P.S.), provides that any justice of the peace who fails to so comply with § 36-19-22, supra, is guilty of a misdemeanor.

We are also of the opinion that this report must contain an itemized list of the fees received for civil cases docketed with the justice of the peace. A reading of § 36-19-1, N.M.S.A., 1953 Compilation (P.S.), indicates that the word "fees", as used in the above quoted section, includes civil as well as criminal fees. It is our view that the Legislature did not draw any distinction between civil and criminal fees. An example of this is found in § 36-19-1, supra, where the Legislature provides a fee of \$ 5.00 for each civil and criminal case docketed. That language reads:

"For each civil or criminal case docketed \$ 5.00."

It is our view that this is clear evidence along with the entire section last cited that the Legislature did not intend to exempt civil fees from being reported on the required report.

By: Boston E. Witt

Assistant Attorney General