

## Opinion No. 64-140

November 13, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General James V. Noble, Assistant Attorney General

**TO:** Honorable Samuel Z. Montoya, District Judge, County Court House Santa Fe, New Mexico

### QUESTION

QUESTION

May a district fund retain costs reimbursed to it in a criminal case?

CONCLUSION

No.

### OPINION

ANALYSIS

Section 41-13-4, N.M.S.A., 1953 Compilation provides that costs shall be adjudged against a convicted defendant in all criminal cases. This section of our laws is first found at page 30, New Mexico Session Laws 1888-1889. The title of the act, of which the above cited section is Section 2, recites in substance that it was an act to save money and to prevent fraud, and provided, among other things, what could be charged as court costs and how such costs were to be collected. Although provisions were made as to accounting for, receipt, and expenditure of such costs, no provision was made requiring the court to remit to any-one any costs so collected.

Subsequently the legislature enacted the provisions of Section 16-3-25.1 which reads as follows:

"Each clerk of the district court shall remit **all** costs collected in criminal cases to the state treasurer for credit to the state court fund."

It is an elementary rule of statutory construction that a statute, clear and unambiguous on its face need not and cannot be interpreted by a court. **Southerland, Statutory Construction**, 3rd Ed. Vol. II, Section 4502, p. 316; Section 4702, p. 334; **Atlantic Oil Producing Co., v. Crile**, 34 N.M. 650, 287 P. 696; **George v. Miller & Smith**, 54 N.M. 210, 219 P.2d 285.

Many other decisions of our Supreme Court have expressed the same principle and a recital thereof would be of little value.

Two other rules of statutory construction are applicable. The first is that all words are to be given effect, if possible, and that words are to be given their usual and normal meaning where possible. **Southerland, Statutory Construction**, Vol. II, Section 4705, p. 339; **Cox v. City of Albuquerque**, 53 N.M. 334, 207 P.2d 1017; **In re Cox Estate**, 67 N.M. 543, 260 P.2d 909; **Valley Country Club, Inc., v. Meador**, 64 N.M. 59, 323, P.2d 1099.

Following these rules of statutory construction, there appears to be no basis for a construction of Section 16-3-25.1, supra. Its language on its face is not ambiguous and, giving the words their usual and normal meaning in light of the entire statute, no ambiguity appears. In addition, and although unnecessary in view of the foregoing, the legislative history of the act discloses no basis for any other conclusion.

The language of the section specifically states that **all** costs must be remitted and makes no exception or provision for reimbursement to the court fund for such costs as have been expended. There is no basis for giving the word "**all**" any meaning other than its usual and normal effect regardless of whether criminal costs are **received as a reimbursement** of court fund expenditures or are in **excess thereof**, they must in their entirety, be transmitted to the state treasurer. It would be necessary for the legislature to enact new legislation before a different result could be reached.