

Opinion No. 64-48

April 8, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Wayne C. Wolf, Assistant Attorney General

TO: Mr. Ethan K. Stevens, Assistant District Attorney, Clayton, New Mexico

QUESTION

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May witnesses in civil suits in justice of the peace court receive witness fees?

CONCLUSION

Yes, but see Analysis.

OPINION

ANALYSIS

In 1887 the legislature of the Territory of New Mexico passed Chapter 40, Laws of 1887. Section 2 of that chapter is found at § 36-19-7, N.M.S.A., 1953 Compilation. It reads as follows:

"Witness fees. -- When any person shall be summoned as such witness to give evidence beyond or without his proper precinct, before any justice of the peace within his county, he shall receive (\$ 0.50) fifty cents for each day's necessary attendance; and shall also receive for each mile of travel in going to and returning from the place of trial, five cents (5c)."

Prior to a 1963 amendment, provision for the collection of these fees was made by § 36-19-6, N.M.S.A., 1953 Compilation. As amended by Section 14, Chapter 300, Laws 1963, the present Section 36-19-6, supra, provides for the payment in civil suits of costs required by law to be collected by justices of the peace. Section 36-19-1, N.M.S.A., 1953 Compilation, specifies what costs are required to be collected by justices of the peace. Witness fees in civil cases are not included in those costs.

Section 36-19-8, N.M.S.A., 1953 Compilation, which was enacted as it now stands by Section 8, Chapter 22, Laws 1889, although it does not authorize the taxing of witness fees, indicates that witness fees may be taxed as costs in civil proceedings before justices of the peace. This last mentioned section limits the amount of witness fees that can be taxed as costs.

It therefore appears that recent amendments have failed to provide for the taxing of witness fees by justices of the peace. Sections of the statutes existing at the time of amendment, however, indicate that costs might be taxed by justices of the peace. Turning to some general principles of statutory construction we find that while repeals by implication may occur, the same are not favored. **State v. Valdez**, 59 N.M. 112, 279 P. 2d 868. Likewise, the Legislature is presumed to know the existing law and to intend to achieve a consistent body of law. **Bartlett v. U.S.**, 166 F.2d 920 (C.A. 10th Cir. 1948). The following supporting statement appears at Section 2021, Sutherland, Statutory Construction:

"The enactment of a general law broad enough in its scope and application to cover the field of operation of a special or local statute will generally not repeal a statute which limits its operation to a particular phase of the subject covered by the general law, or to a particular locality within the jurisdictional scope of the general statute. An implied repeal of prior statutes will be restricted to statutes of the same general nature, since the legislature is presumed to have known of the existence of prior special or particular legislation, and to have contemplated only a general treatment of the subject matter by the general enactment. Therefore, where the conflict, the prior special statute will be construed as remaining in effect as a qualification or exception to the general law."

Therefore, unless an irreconcilable conflict exists, the special sections providing for payment of witnesses and limiting the taxing of costs must be construed as exceptions to the later general enactment specifying what costs may be taxed by justices of the peace. The itemization in § 36-19-1, supra, refers to those costs which the justice may collect for himself as his charges and to those which he is required to submit to the administrative office of the courts. Witness fees, however, would be taxed against one party and paid to the witnesses. It is our opinion, in view of the scope of § 36-19-1, supra, and in accordance with the principles of statutory construction already discussed, that witnesses in justice of the peace court may receive fees as provided by law. Since there is no provision for submitting these fees to the administrative office, it is our opinion that the fees may be taxed in favor of the prevailing party and paid directly to the witnesses. The records of each justice, including his official receipts, should show clearly how the fees are collected and disbursed.