

Opinion No. 66-56

May 9, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

TO: Mr. Louis R. Lopez, Administrative Assistant to Court Administrator, Supreme Court Building, Santa Fe, New Mexico

QUESTION

FACTS

A Justice of the Peace either resigns, dies, or is removed from office. At that time all of his records are to be delivered to the nearest Justice of the Peace to hear and determine the final disposition pursuant to Section 36-1-8, N.M.S.A., 1953 Compilation.

QUESTION

When the records are transferred, is the \$ 5.00 fee which the Justice of the Peace receives for his services transferred to the new Justice of the Peace handling the case?

CONCLUSION

No.

OPINION

{*69} ANALYSIS

Section 36-1-8, N.M.S.A., 1953 Compilation provides as follows:

"DEATH, RESIGNATION OR REMOVAL OF JUSTICE -- JUSTICES' COURTS TO BE PUBLIC. -- If any justice of the peace dies, resigns, or removes out of the precinct, for which he may be elected, or his term of office be in any manner terminated, the docket, books, records, papers and documents pertaining to his office, or relating to any suit, matter or controversy, committed to him in his official capacity, shall be delivered to the nearest justice of the peace, in the same county, who may thereupon proceed to hear, try and determine such matter, suit or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice before whom such matter, suit or controversy, was commenced, to have done. And all justices' courts shall be public."

In the above section there is no direct reference to costs and fees collected by the initial judge. No other statutory section concerns the problem either directly or indirectly.

In order for a determination to be made that costs and fees are to be transferred under Section 36-1-8, supra, the language "docket, books, records, papers and documents" would have to be construed to include those items.

It is our opinion that the above phrase does not include or contemplate the transfer of costs collected by the Justice of the Peace before whom the case was initially filed. These costs could not be categorized as documents, books, or records, papers or docket.

We find support for our view in the statutes. Specifically, we refer to Sections 36-3-12 through 16, N.M.S.A., 1953 Compilation. In those sections which concern the disqualification of Justices of the Peace, the disqualified Justice is given specific direction to turn over not only all papers concerning a case but all costs collected as well. If it were necessary to give specific direction there, the same would be true when transferring records pursuant to Section 36-1-8, supra.