

## Opinion No. 66-98

August 8, 1966

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

**TO:** Mr. Hadley Kelsey, Legal Section, State Highway Commission, Santa Fe, New Mexico

### QUESTION

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Where the State Highway Commission brings damage claims in the Justice of the Peace Courts, may it be taxed for court costs such as fees for civil and criminal cases docketed.

#### CONCLUSION

No, unless the claim is brought under statutory authority.

### OPINION

#### {\*132} ANALYSIS

A suit by or against the Highway Commission is one by or against the state itself. **State ex rel. Board of County Com'rs of Grant County v. Burks**, 75 N.M. 19, 399 A.2d 920. Two New Mexico statutes pertain to costs against the state. Sections 16-3-64, 21-1-1 (54) (d), N.M.S.A., 1953 Compilation, both refer generally to district courts and both exempt the state from taxation of court costs. Sections 36-19-1 through 36-19-24, N.M.S.A., 1953 Compilation, deal with fees and costs in the Justice of the Peace Courts. Under these statutes, there is no mention of the state or its agencies as regards costs. Under {\*133} Section 36-19-1, N.M.S.A., 1953 Compilation, titled "Costs of Justices of the Peace" is listed a \$ 7.50 fee for each civil or criminal case docketed. It is our opinion that this fee cannot ordinarily be taxed against the state.

The New Mexico courts have not dealt with the problem of charging the state or its agencies with court costs. But the general rule that a state cannot be taxed for costs in one of its courts without consenting thereto by express statutory authorization has been handed down in some thirty or more states. See 72 A.L.R.2d 1379 (Anno: Costs -- Liability of the State). The rule is not limited to a specific court, but applies to all state courts in general. **State of Utah v. United States of America**, 304 F.2d 23, **State ex rel. Erwin v. Colonial Acceptance, Inc.**, (Fla) 80 So.2d 681, **Sandberg v. State**, 113 Wis. 578, 89 N.W. 504. The Justice of the Peace is set up as a court of the State of New Mexico under Art. VI § 1, New Mexico Constitution. We hold that in general the

rule that absent express statutory authorization a court may not tax a state would apply in a Justice of the Peace Court as well as in a district court.