

Opinion No. 67-53

March 30, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Sandra Townsend, County Clerk San Juan County County Courthouse Aztec, New Mexico 87410

QUESTION

FACTS

Section 71-1-8, N.M.S.A., 1953 Compilation (1965 P.S.) provides for a fee of \$ 1.00 for each certificate and seal to documents recorded by county clerks. Section 71-1-11, N.M.S.A., 1953 Compilation, states that County Clerks are to collect a fee of \$ 0.25 for every certification and seal.

QUESTION

Is Section 71-1-8, supra, controlling?

CONCLUSION

Yes.

OPINION

{*73} ANALYSIS

From a reading of Section 71-1-8, supra, and Section 71-1-11, supra, it is clear that the statutes are in direct conflict as to the price a county clerk is to charge for each certificate and seal given. Apparently this conflict has existed since 1865 when both statutes were enacted and became effective upon the same day.

The Supreme Court of the State of New Mexico has repeatedly held that repeals by implication are not favored. However, where a positive repugnancy between provisions of two statutes exists and they cannot be reconciled and made to stand together, then the {*74} earlier statute will fall, but only those parts of the older statute which are irreconcilable with the newer will fall. **Alvarez v. Board of Trustees of La Union Townsite**, 62 N.M. 319, 309 P. 2d 989.

In 1965, the Legislature saw fit to amend Section 71-1-8. Section 71-1-11, supra, has not been amended. Therefore, we construe Section 71-1-8, supra, as being the latest legislative expression on the subject of the fee for certification and seal to documents recorded.

It is the opinion of this office that Sections 71-1-8 and 71-1-11, supra, contain a positive inconsistency or repugnancy relating to the fees to be charged by county clerks for a certificate and seal. We are also of the opinion that Section 71-1-8, supra, having been amended by the 1965 Legislature now stands as the last legislative pronouncement on this subject. Therefore, Section 71-1-8, supra, is controlling and the fee which it sets out for each certificate and seal to documents recorded is the proper fee to be charged by county clerks.

By: Paul J. Lacy

Assistant Attorney General