

Opinion No. 68-65

June 24, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: C. Verne Hale, Jr. City Attorney City Hall Grants, New Mexico

QUESTION

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May a municipality charge a filing fee or other costs for cases filed in its municipal court?

CONCLUSION

No.

OPINION

{*109} ANALYSIS

We have made a thorough search of the statutes and find that the Supreme Court, the Court of Appeals, district courts, small claims courts, and justice of the peace courts all have specific statutory authority for charging filing fees. These fees are fixed by law. Nowhere can we find authority for a municipal court to charge a filing fee. It is well settled that municipalities are creatures of the laws of the State of which they are a part and their powers are derived solely therefrom. **Munro v. City of Albuquerque**, 48 N.M. 306, 150 P.2d 733 (1943). Statutes granting power to municipalities must be strictly construed and municipalities must keep closely within their statutory powers. **City of Clovis v. Crain**, 68 N.M. 10, 357 P.2d 667 (1960). Since we have been unable to find statutory authority for municipalities to charge filing fees or costs in municipal courts we must conclude that they are without such power.

Our opinion is further supported by Section 40A-23-1, N.M.S.A., 1953 Compilation of our Criminal Code which provides that it is a petty misdemeanor for a public officer to demand an illegal fee.

"Demanding illegal fees consists of any public officer or public employees knowingly asking or accepting anything of value greater than that fixed or allowed by law for the execution or performance of any service or duty." Section 40A-23-1, *supra*.

Furthermore it is a ground for removal of a public officer if he demands or receives an illegal fee for his services. Section 5-3-4 (3), N.M.S.A., 1953 Compilation.

It is the opinion of this office that before a municipal court charges a filing fee or other costs our legislature must grant to the municipality statutory authority for charging such a fee or costs.

By: Gary O'Dowd

Assistant Attorney General