

**Opinion No. 14-1160**

February 11, 1914

**BY:** IRA L. GRIMSHAW, Assistant Attorney General

**TO:** Hon. George E. Remley, District Attorney, Cimarron, New Mexico.

**CONSTABLE.**

Constable cannot be paid fees from county funds in cases of misdemeanor.

**OPINION**

{\*13} Your letter of the 9th inst., addressed to Mr. Frank W. Clancy, has been referred to me for attention on account of his absence from the city.

I understand that you desire to know whether or not there is any law which will permit the payment of constable fees and expenses in misdemeanor cases, when those expenses are necessarily incurred in carrying out the mandate of the justice of the peace.

I am unable to find any authority on the statute books which will permit a constable to be paid from county funds for railroad fare and actual cash expenditures made by him for himself and a prisoner, in misdemeanor cases, where the defendant or prisoner is so situated that he is unable to pay the fees allowed the constable under the law for services, mileage, etc. Then, because of the absence of legislation, it necessarily follows that these expenditures are a loss to the person occupying the office of constable.

We realize the injustice done in this regard, but it is a case which the legislature must properly remedy, and until that remedy is provided we are unable to say how the constable can be reimbursed in misdemeanor cases when the prisoner or defendant is unable to pay the charges allowed the constable by law.

When Mr. Frank W. Clancy returns to the city we will submit your letter to him for the purpose of attempting to obtain his construction of this section of the law.