

Opinion No. 16-1792

May 8, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Ralph G. Roberson, Estancia, N. M.

County does not pay witness fees in cases before justices of the peace.

OPINION

{*361} I have received your letter of the 5th instant in which you say that you have seen a letter to the Clerk of Torrance County that the county commissioners should allow costs to justices of the peace and constables in preliminary hearings, but not anything to witnesses. The letter referred to said that it would be proper to allow such costs in preliminary hearings in felony cases, but that costs should not be paid from the public treasury in cases of misdemeanors. Your inquiry is evidently limited to criminal cases only.

I am of opinion that the provisions of Section 5899 were intended to apply only to civil cases. There was on the statute book at one time a provision that when a witness was summoned to testify beyond his own precinct before a justice of the peace within his county, he must be tendered his fees for one day and mileage before he could be compelled to appear or be punished for not appearing. This is clearly applicable to civil cases because in criminal cases there would be no one in position to tender fees and mileage from any public fund, nor could it be expected that a prosecuting witness in a criminal case should be put to any such expense. I am satisfied that this has been the uniform construction given to this statute as I never have known of any county paying fees of witnesses who testified in criminal cases before justices of the peace. The next section, 5900, which was a part of the same original act as Section 5899, clearly has reference only to civil cases when it provides that in no case shall any fees for witnesses be taxed to exceed four witnesses on each side, unless under the direction of the court.