

Opinion No. 19-2311

July 2, 1919

BY: N. D. MEYER, Assistant Attorney General,

TO: Mr. Alfredo Lucero, Clerk of the District Court, Santa Fe County, Santa Fe, New Mexico.

Docket Fees in District Courts.

OPINION

This office has been in receipt of your letter of June 20th for several days but owing to the fact that we have been short in our stenographic force we have been unable to give the same attention ere this. We are sorry for this delay, but it was caused by conditions over which we had no control.

We will set forth herein in concise form the questions based on House Bill 250, which you ask in your letter, and give after each question our construction of those parts of such bill in regard to which you inquired.

1. Does the \$ 7.50 cover all costs of defendant, etc?

This question we answer in the affirmative. It is our view that this fee of \$ 7.50 covers all costs incurred by both the plaintiff and the defendant, excepting those extra charges provided for in the same section of House Bill 250.

2. In cases filed prior to June 15, 1919, and where the advance fee of \$ 5.00 is insufficient to cover costs already charged, should an extra fee of \$ 2.50 be collected or should the former fee of \$ 5.00 cover all costs to the final consummation of the case, even if there is a balance due for costs prior to June 15, 1919?

Section 2 of the 1919 act provides as follows:

"This act shall apply to all pending litigation; provided, where cases have been docketed no additional charge shall be made on account of the docket fee."

Our construction of this provision is that up to the time of the new law becoming effective all charges should be made in accordance with the old act. However, if the charges incurred in any particular suit up to June 15 exceed the advance deposit of \$ 5.00 then the litigants are liable and should pay the amount due over and above their advance deposit. On the other hand, if the costs incurred amount to less than the \$ 5.00 advance deposit required under the old act, no return to the litigant should be made for the difference, but the said \$ 5.00 advance deposit shall be credited to the county in lieu of the \$ 7.50 docket fee required by the new act. In any event, no extra charge should

be made in any case up to June 15, except to cover actual costs incurred as per the old law.

3. Should the deposit of \$ 7.50 be placed immediately to the credit of the county even if the same has not been expended in the case?

Under the new law the \$ 7.50 required to be paid as a docket fee is not in the nature of an advance deposit as was the case in the old law. This is a flat fee required of the plaintiff at the time of filing his suit and when he has done so the \$ 7.50 fee has been expended and should be credited to the county and paid over to the county treasurer within ten days after the first day of each month as required by section 5 of said House Bill 250.

This fee covers all costs of suit, excepting as hereinbefore stated, those extra charges which are provided for in said act. Of course, you understand that the system of charging so much for every instrument filed in civil cases, and many other charges, are repealed by House Bill 250, and no other or different fee than that provided for in said bill is to be charged by clerks of the district court.

I trust that the foregoing has satisfactorily answered the questions contained in your letter, and beg to remain,