

## **Opinion No. [29-110]**

August 7, 1929

**TO:** Office of the Attorney General of New Mexico

TAXATION -- Disposition of costs collected after suit filed.

### **OPINION**

I have your favor of the 2nd inst. requesting my opinion as to the meaning of the last two lines of section 2 of chapter 143 of the Laws of 1929, which read: "and credit such service and court fees to the fund to which such fees would be credited if received from the Clerk of Court." In your letter to me you state as follows:

"The writer knows that it was the intention of the member who introduced House Bill 327 to provide for the re-payment to whatever fund a sheriff might have theretofore been reimbursed for service fees of the amount thereof when it should be collected with the tax. For instance, should the County Commissioners pay a sheriff for service fee out of the General Fund, it was the thought that when that fee should be collected with the tax the amount thereof should be credited to the General Fund."

What you wish to know is whether or not, under the present condition of the Act, the funds can be treated in the manner indicated as the intention of the introducer of the bill.

In reply thereto will state that the wording of this statute as it stands, means that the treasurer shall collect the fees and put them in the same funds as they they had been first paid to the clerk and then by him turned over to the treasurer, as heretofore done. In other words, no one can go into the treasurers office and pay up his taxes, after a suit has been commenced against him, without at the same time paying these accrued costs that have accrued against him in the case in court.

The only changes this new law of 1929 has effected are first, the sheriff cannot demand his costs in advance in a tax suit, as he could under section 1268 of Code of 1915; and second, provides for the collection of the court costs by the Treasurer if the taxes are paid to him, after suit is filed. The distribution of the collected costs and the payment of the sheriff are left exactly as they were under the old law.

I can see no possible interpretation of this new statute that would accord with the one suggested in your letter, as the one intended by the author of the bill.