

Opinion No. [29-20]

March 14, 1929

BY: M. A. OTERO, JR., Attorney General

TO: Mr. Harry F. Lee, Deputy County Clerk, Bernalillo County, Albuquerque, New Mexico.

COUNTY CLERKS -- Tax of \$ 5.00 imposed on civil actions. § 138-210, Code 1929.

OPINION

With further regard to our telephone conversation in which you asked me whether or not House Bill No. 279 passed by the last session of the Legislature, providing for the codification of the laws of this State, etc. carried the emergency clause, I beg to advise that the properly enrolled and engrossed bill, signed by the presiding officers of both houses in open session, duly approved by the Governor, and on file in the office of the Secretary of States does carry the said emergency clause.

Hence the said law is now in full force and effect and it becomes the duty of the county clerks to immediately commence carrying out the provisions of section 10 of the said Act, which same reads as follows:

"Section 10. There is hereby levied a tax of \$ 5.00 upon each and every action filed in the office of the Clerk of the various District Courts of the State of New Mexico, which said tax shall be paid to the Clerk at the time of the filing of such action, by the party so filing the same, and which shall be kept by said Clerk in a separate fund and remitted to the State Treasurer on the first day of each and every month, for the purpose of reimbursing the State Treasurer for the moneys herein appropriated. Upon full reimbursement to the State, the State Treasurer shall certify such fact to each Clerk of the District Courts within the State of New Mexico, and upon receipt of such certificate by such Clerk no further tax herein levied shall be collected."

For your further information will state that it is my opinion that the words "each and every action filed in the office of the Clerk" have reference to regular civil actions only. Furthermore, you will note that the law designates the Five Dollars chargeable, as a "tax", instead of using the ordinary term "costs", which same is to be remitted on the first day of each month to the State Treasurer.

In this connection will state that the same cannot be taxed as costs and collected back should the plaintiff prevail in any given case. It is simply a question of charging a prospective litigant the sum of \$ 5.00 over and above the regular court costs of \$ 7.50, the said \$ 5.00 to go to the State Treasurer and under no circumstances to be returned to the litigant, regardless of the outcome of his suit.