

**Opinion No. [29-28]**

July 30, 1929

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

**TO:** Mr. Fred C. Stringfellow, District Attorney, Raton, New Mexico.

DOCKET FEE TAX -- Applicable to civil actions only. § 133-210, Code 1929.

**OPINION**

Your favor of the 23rd inst. with reference to section 10 of chapter 135 of the Laws of 1929 arrived during my absence from the city, hence the delay in acknowledging same.

You ask whether or not I interpret this law to mean that for every criminal and civil appear from justices of the peace corps, the \$ 5.00 tax should be collected.

In reply thereto will state that we have gone into this question at some length and have reached the conclusion that the only actions to which this tax would apply would be to civil actions filed **originally** in the district court, in which the state is not the party filing, and that the same does not attach to **any** appeals.

In arriving at this conclusion, we naturally figured that the real intent of the legislature was to get the money to reimburse the state for the amount paid out by the state to Mr. Courtright for the codification of the laws. Section 3222 of the Code of 1915, regarding the filing of transcripts on appeals, provides that,

"On or before the first day of the next term of the district court for the county, the justice shall file in the office of the clerk of said court a transcript of all the entries made in his docket relating to the case, together with all the papers relating to this suit."

Here the justice of the peace is the one required by statute to file the transcript, and hence he would be the one required to pay the \$ 5.00 tax on filing the same. There is no provision for him to get it from the litigant or to assess it as an item of costs, and surely the legislature would not assess a fee of that nature upon a justice of the peace.

All in all, it would appear that the legislature had in mind only such cases as were of sufficient importance to be filed originally in the district courts, and that it did not mean to include the various causes that were filed originally in justice of the peace courts.

If this matter should happen to be taken to the Supreme Court I am inclined to believe that the court would take the same view of this proposition.