

**Opinion No. 41-3764**

April 10, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Rolando J. Matteucci Assistant District Attorney Albuquerque, New Mexico

{\*58} This will acknowledge receipt of your letter dated April 4, 1941, in which you request an opinion from this office on the following questions:

"In the event that an appearance bond is forfeited does the Justice of the Peace {\*59} turn the amount of the bond over to the Sheriff's office or does he turn it over to the County Treasurer and order the same to be distributed as in the case of a fine. Furthermore, is the Justice of the Peace entitled to his court costs out of said bond?"

Section 105-2303, New Mexico Statutes Annotated, 1929 Compilation, provides as follows:

"The defendant may, in the place of giving bail, deposit with the clerk of the court to which the defendant is held to answer, the sum of money mentioned in the order, and upon delivering to the sheriff a certificate of deposit, he must be discharged from custody."

In view of the foregoing it is my opinion that the full amount of a cash bond taken by any law enforcement officer should be deposited with the clerk of the district court to which the defendant is held to answer. Thereafter the district judge may or may not find that the bond has been forfeited.

The Justice of the Peace may not deduct the amount of his costs from the bond before turning the money over to the court. As a matter of fact, he should have turned the money over to the clerk of the court prior to the time when the defendant is supposed to appear in that court. The Justice of the Peace may submit a properly approved voucher to the county treasurer (see Chapter 87, Laws of 1937) and receive the amount of his costs as are allowed by law under the provisions of section 79-1301, New Mexico Statutes Annotated, 1929 Compilation.

Trusting that the foregoing sufficiently answers your inquiry, I am

By GEO. H. HUNKER, Jr.

Asst. Atty. General