

## Opinion No. 41-3927

October 22, 1941

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

**TO:** Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{\*110} This letter is being written to amend opinions No. 3920, 3912 and 3846 heretofore rendered relative to the fees to be charged by clerks of the court, in view of the provisions of Section 11, Chapter 191 of the Laws of 1941, Chapter 182 of the Laws of 1941, and Section 4, Chapter 14 of the Laws of 1934.

We were heretofore under the impression that Section 11 of Chapter 191 of the Laws of 1941 followed verbatim the provisions of Section 4 of Chapter 14 of the {\*111} Laws of 1934, except for the difference in the amount of the tax. After further study of the two acts, however, we note that the 1941 act differs from the 1934 act in that the 1941 act specifically levies the \$ 1.25 tax upon each and every civil action "upon which a docket fee is now required to be paid."

In view of the foregoing, we now conclude that the \$ 2.50 tax provided for under the 1934 law is collectible by the clerk in all cases except in suits filed by state or Federal agencies and appeals to the district court from probate courts or justice of the peace courts.

The \$ 1.25 tax levied under the 1941 law is collectible in all cases where a docket fee is now required to be paid, either in an original action or upon appeal from an inferior court to the district court, except actions filed by state or Federal agencies.

The \$ 1.25 tax levied under the 1941 law is not collectible upon the following types of cases:

- (1) Workmen's Compensation cases.
- (2) Free process cases.
- (3) Tax petitions filed under Section 141-306, 1929 Compilation, and approved by the district attorney.
- (4) Tax petitions filed under Chapter 212, Laws of 1939, and
- (5) Suits by Federal agencies upon which a docket fee is now required to be paid.

The aforesaid \$ 1.25 fee set forth by Chapter 191 of the Laws of 1941 should be collected on all other cases docketed in the district court, whether an original action or an appeal from the justice of the peace court or probate court.

If we have failed to cover all of the exceptions (we can think of no other ones at this time), same will be covered by the general proposition above set forth.