

**Opinion No. 42-4034**

February 26, 1942

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

**TO:** Mr. Fred J. Federici District Attorney Raton, New Mexico

{\*165} In your letter of February 25 you request our opinion as to whether or not a justice of the peace is entitled to a \$ 3.00 fee "for presiding in felony trials", as set forth under Section 79-1301, New Mexico Statutes Annotated, 1929 Compilation, where the defendant, at the time of his arraignment before a justice of the peace, pleads not guilty, waives a preliminary hearing and is bound over by the justice of the peace to the District Court for trial.

In connection with this matter, I did not find where this office has ever in the past ruled on the instant question. It occurs to me, however, that a justice of the peace court is in session when a defendant, charged with the commission of a felony, is arraigned before him and given the right to a preliminary hearing, and that the justice of the peace is therefore entitled to the \$ 3.00 fee "for presiding in felony trials", regardless of the fact that the defendant waives his preliminary hearing.

Even though a preliminary hearing is waived, all of the requirements of the law have been complied with, the justice of the peace has called his court in session for such purpose, given of his time, and I therefore conclude that he is entitled to the \$ 3.00 fee as provided by law.

By HOWARD F. HOUK,

Asst. Atty. General