

Opinion No. 42-4202

December 21, 1942

BY: EDWARD P. CHASE, Attorney General

TO: New Mexico Public Service Commission Santa Fe, New Mexico. Attention: Mr. Ed L. Manson Commissioner

{*291} We are in receipt of your letter of recent date in which you state that a witness subpoenaed on behalf of the complainants, C. M. Rouse, et al., for a hearing held in Santa Fe December 10, 1942, has sent an invoice to you to cover the amount of his witness fees. You ask whether or not the Public Service Commission is responsible for these fees.

Section 72-813, New Mexico Statutes, 1941, provides that:

"Witnesses who are summoned before the Commission shall be paid the same fees and mileage as are paid to witnesses in the courts of record of general jurisdiction."

The only effect of this section is to set the amount of the fees to be paid to witnesses by reference to the fees paid to witnesses in courts of general jurisdiction, as provided by Sections 20-104 and 20-105, New Mexico Statutes Annotated, 1941.

It is Section 72, 1103, New Mexico Statutes Annotated, 1941, which is controlling on the question of who shall pay the respective fees. The first sentence of this section provides:

"In all proceedings before the Commission and in the courts on review each party to the controversy shall bear his own costs and no costs shall be taxed against either party."

By virtue of this latter section, it is my opinion that the party on whose behalf this witness was subpoenaed is responsible for the payment of the witness fees involved.

By ROBERT W, WARD,

Asst Atty. General