

Opinion No. 43-4314

June 9, 1943

BY: EDWARD P. CHASE, Attorney General

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

We are in receipt of your letter of June 8, 1943, in which you state that the Sheriff of Taos County called upon the Defendant for payment of a Writ of Execution, whereupon the Defendant immediately paid the full amount called for by such Writ. In view of these facts, you ask whether the Plaintiff or Defendant must bear the Sheriff's commission provided for in Section 15-3819 of the New Mexico 1941 Compilation.

In *Jones-Noland Drilling Company v. Bixby*, 34 N.M. 413, the Sheriff taxed as cost 4% commission upon the collection of an execution. This collection was made after the Writ had been levied and sale advertised, but before the sale was had. There the Court held that this commission was properly taxed against the Defendant.

In view of the foregoing, it is my opinion that the Sheriff's commission provided for in Section 15-3819 must be taxed as a cost and paid by the Defendant or debtor.

Your attention is called, however, to Section 1 of Article 10 of the Constitution of the State of New Mexico, wherein it is stated that:

"No county officer shall receive to his own use any fees or emoluments other than the annual salary provided by law, and all fees earned by any officer shall be by him collected and paid into the treasury of the county."

Pursuant to your request, you will please find enclosed copy of this opinion to be transmitted to the Sheriff of Taos County.

Trusting that the foregoing sufficiently answers your inquiry, I remain

By ROBERT W. WARD

Asst. Atty. General