

January 17, 1936

Hon. E. Grice
Justice of the Peace
Globe, Arizona

Dear Judge Grice:

We have yours of January 15, 1936, wherein you ask for an opinion of this office as to whether or not a garnishee-defendant may be allowed a fee for answering when the writ is issued in a case wherein the amount sued for is under fifty dollars.

It is the opinion of this office that Section 1465, Revised Code of Arizona, 1928, wherein it says that no other fee shall be paid in cases of this type except the one dollar which shall be paid at the time of the institution of suit, does not apply in determining whether or not garnishee-defendant is entitled to an attorney's fee, for the reason that the fees referred to in Section 1465, Revised Code of Arizona, 1928, are the fees which are to be paid to the justice of the peace, the constable, and sheriff.

Attorney's fees are allowable to the garnishee-defendant under Section 4275, Revised Code of Arizona, 1928, in all types of cases, and we see no reason why a garnishee-defendant should be dragged into Court by another, be required to answer and employ an attorney at his own expense, merely because the amount sued upon is less than fifty dollars.

It is the opinion of the Attorney General that the Court may allow an attorney's fee to a garnishee-defendant upon his discharge, in cases wherein the sum sued for is fifty dollars or less.

Respectfully submitted,

JOHN L. SULLIVAN
Attorney General

W. FRANCIS WILSON
Assistant Attorney General

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