

February 9, 1937

Hon. William Wisener
House of Representatives
Capitol Building
Phoenix, Arizona

Dear Mr. Wisener:

You have asked if the provisions of House Bill 34 will apply to juries in justice courts.

An examination of the various statutes relative to the situation discloses as follows: Paragraph 4209, Revised Code of Arizona, 1928, provides as follows:

"Procedure in superior court to govern. The law governing the procedure in the superior courts regarding parties to a suit; pertaining to costs; the contents of summonses, the issuance, service and return of summons; the acceptance of service and entrance of appearance; the amendment of pleadings; challenge of jurymen; the mode of proceeding on trial before a jury (except that the justice of the peace shall not charge the jury) or before the justice without a jury; the procuring of witnesses and the taking of testimony; judgments and the granting of new trials; the issuance of writs or other processes and their execution and return; the giving of bonds, and all other laws of procedure, so far as applicable and not otherwise especially prescribed, shall govern the procedure in justice of the peace courts."

It will be seen from an examination of this statute that except in cases where other laws are applicable, the procedure in superior courts shall govern the procedure in justice courts. The test then of whether or not House Bill 34 as amended would apply to justice courts, depends upon whether or not there is any special proceeding in the law relative to justice courts regarding the selection and pay of jurors.

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We find that Article 4 of Chapter 89 on Justices of the Peace, being paragraphs 4190 to 4195 inclusive, of the Revised Code of Arizona 1928, provide for the selection of juries in justice courts. Therefore, the selection of the jury as provided for in the superior court law would not apply.

Added to the last mentioned paragraphs are the provisions of Paragraph 1919, Revised Code of Arizona 1928, which provides for the method of summoning jurors in justice or police courts, and which provision is substantially different from that in the superior courts.

Paragraph 1487, Revised Code of Arizona 1928, fixes the fees for jurors and the fees provided in justice courts and superior courts are entirely different.

Paragraph 1482, Revised Code of Arizona 1928, provides what costs are taxable in the Superior Court and includes the taxing of a jury fee. Paragraph 4197, Revised Code of Arizona 1928, provides for costs in the justice courts and makes no mention of jury fees. It will also be noted that Paragraph 4209, Revised Code of Arizona 1928, provides that the law governing procedure in superior courts shall apply to justice courts, makes no mention of jury fees but does mention costs. There being separate statutes as to the costs to be taxed in each court, it is our opinion that House Bill 34 is confined solely and entirely in its application to the superior court.

Very truly yours,

JOE CONWAY
Attorney General

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Special Assistant
Attorney General

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