

July 19, 1937

Mr. Frank Thomas
County Attorney of Cochise County
Bisbee, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Thomas:

We have received a request from E. L. Stewart, Justice of the Peace, Precinct Number Two, Cochise County, for an opinion with reference to garnishment and attachment costs in civil suits involving over \$50.00. We are giving this opinion to you for your approval and suggesting to Mr. Stewart that he contact your office for this opinion, or such opinion as you wish to approve.

It is the opinion of this office, with reference to civil suits in which an application is made for a writ of garnishment prior to judgment, that with reference to the garnishment, the Justice of the Peace should charge the sum of 75¢ for issuing the writ, this being by virtue of the provisions of Section 1464 governing fees of justices of the peace, providing for a charge of 75¢ for "issuing any other writ or process not otherwise provided for." Inasmuch as bond is required in cases coming under subdivision 2, Section 4258, R.C.A. 1928, in such cases the justice of the peace should likewise charge a fee of 75¢, under the provision of the aforesaid Section 1464 requiring a charge of 75¢ for "each bond not otherwise provided for." If the affidavit upon which the garnishment is issued is signed before the justice of the peace, then he should likewise make the further charge of 75¢, under the provision of that section requiring that charge for "administering an oath or affirmation with a certificate."

We are of the opinion, from the foregoing, that the justice of the peace should make a total charge of \$2.25 for issuing the writ before judgment, in the event that the application comes within the provisions of subsection 2, Section 4258, where the justice administers the oath or affirmation on the affidavit. If this oath is taken before a notary public, in these cases the total charge would be \$1.50. In cases of garnishment issued under subsection 1, no bond would be required, and the fee would be reduced in the sum of 75¢ by eliminating the charge for approving the bond.

With reference to an attachment issued before judgment, we are of the opinion that the charge made by the justice of the peace should be the sum of \$2.00, this being specifically provided for in Section 1464, under the provision for "administering the oath, approving bond and issuing a writ of attachment or replevin." Where a garnishment is issued after judgment, we are of the opinion that the justice of the peace should make a charge of 75¢ for issuing the writ, and a further charge of 75¢ in the event that the affidavit for the writ of garnishment after judgment is made before the justice of the peace. Of course, if this oath is taken before a notary public, the only charge to be made would be that of 75¢.

We are of the opinion that, inasmuch as there is no specific provision with reference to garnishments, either before or after judgment, in Section 1464, the fees to be charged in connection with a garnishment, either before or after judgment, must be governed by the general provisions of this section, and we feel that the general provisions hereinbefore quoted are the ones which govern. These fees would be charged, of course, in addition to the ordinary fees charged in a civil suit involving over \$50.00.

We trust that this answers your inquiry.

We are inclosing an extra copy of this opinion for you to make any use of which you may desire.

Yours very truly,

JOE CONWAY
Attorney General

MARK WILMER
Assistant Attorney General

E. G. FRAZIER
Special Assistant
Attorney General