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ARIZONA ATTORNEY GENERAL

August 6, 1952
Op. No. 52-231

Mr. Barry De Rose
Gila County Attorney
Globe, Arizona

Dear Mr. De Rose:

This is in reply to your letter of July 28, 1952, requesting our opinion regarding two questions. The first is pertaining to eligibility of persons seeking office which we believe was fully answered by Mr. Baker over the telephone and our previous correspondence with you. We will therefore answer only your second question, which is:

"The State Examiner has ordered the Justice of the Peace to collect the fees in civil cases for the constable and the sheriff's office and to place them in a separate account in the Valley National Bank. The Justice of the Peace wants to know if it is his duty to collect these for the constable and for the sheriff and place them in a separate account. The State Examiner is ordering him to do this but he does not feel that it is his duty."

We find no statute of the State requiring a Justice of the Peace to collect constable and sheriff's fees in a civil action in the absence of a voluntary deposit by a party to the action, as hereinafter mentioned. There is no statute empowering the State Examiner to compel a Justice of Peace to collect such constable and sheriff's fees.

Section 34-107, Arizona Code, 1939, as amended by the 1949 Laws, prescribes fees to be received by a Justice of

Mr. Barry De Rose
Gila County Attorney

August 6, 1952
Page two

the Peace in civil actions and the concluding paragraph of such section reads:

"Nothing herein provided shall deprive the parties to the action of the privilege of depositing sums with the justice of the peace, in addition to those hereinbefore set forth, for use in connection with the payment of constable fees and sheriff's fees for the service of process, the levying of writs and other services for which fees are otherwise provided by law."

This gives the privilege to a party in a civil action to deposit with the Justice of the Peace sums of money for use in connection with payment of constable and sheriff's fees incurred in the action. If a party tenders such deposit the Justice is required to accept the same and to that extent he collects constable and sheriff's fees. If such deposits are received by the Justice, we are of the opinion that he should obey the instructions of the State Examiner as to the mode of keeping account of the same, including the instructions to keep them in a separate bank account.

Hoping this answers your inquiries, we are

Very truly yours,

FRED O. WILSON
Attorney General

CHAS. ROGERS
Assistant Attorney General

CR:mw

cc: Mr. Dan Benchoff