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December 29, 1952
ARIZONA ATTORNEY GENERAL

Honorable George W. Martin
Justice of the Peace
Cochise County Courthouse
Douglas, Arizona

Dear Judge Martin:

This is in reply to your letter of December 17, 1952, wherein you ask regarding the charges in cases of \$50.00 or less. The statute directs that the county attorney is your legal advisor, but owing to the fact that many of the county attorneys maintain a civil practice before the justice of the peace, and further because this question arises out of a direction from a state official, we are answering your question and will send a copy of this opinion to Mr. Wesley Polley and to Mr. Benchoff. It appears that in order to properly answer your question we should quote your entire letter before attempting to give an opinion thereon:

"Mr. Dan T. Benchoff, the State Examiner, has informed me that it is necessary for me to collect \$5.00 for fees in civil cases of \$50.00 or less, and also for the sheriff to charge for his services, the same as for all other civil cases.

In reading both, paragraphs 34-108 and 54-107 of the Arizona Code Annotated, 1939, it appears to me that the only fee that can be charged in this case, either by myself and by the sheriff is the sum of \$1.00.

Will you please let me know what is correct, as some of the attorneys feels that the fee should be only \$1.00."

By Chapter 113, the Legislature of 1949 amended Section 34-107 and repealed all acts and parts of acts in conflict therewith. We will quote this entire chapter for clarification:

"34-107. FEES OF JUSTICES OF THE PEACE IN CIVIL ACTIONS. Justices of the peace shall receive the following fees in civil actions:

Except as herein otherwise specifically provided, for all services required of and rendered by the justice of the peace including, but not limited to, the issuance of process, the issuance of writs before and after judgment, the summoning of a jury, the administration of oaths and the filing and recording of judgments in connection with any civil action, where the amount in controversy exclusive of interest and costs exceeds the sum of fifty dollars, and such services are rendered on behalf of the plaintiff, the sum of \$3.00.

Except as herein otherwise specifically provided, for all such services required of and rendered on behalf of the defendant, or those defendants appearing by one attorney, the sum of \$2.00.

For all such services required of and rendered by the justice of the peace in connection with any civil action, whether for the plaintiff or for the defendant, where the amount in controversy, exclusive of interest and costs, is fifty dollars or less, the sum of \$1.00.

For making and certifying a transcript of the entries on his docket, and filing the same, together with the original papers in the case in the proper court in each case of appeal or certiorari \$2.00.

For making copies of any papers or records in his office for any person applying for the same, for each one hundred words, excluding the certificate, and excluding the signature of the justice of the peace \$0.20.

For certifying copies of papers or records in his office, exclusive of the cost of making such copies,

George W. Martin
Justice of the Peace
Douglas, Arizona

December 29, 1952
Page Three

but including the preparation of the certificate and the signature of the justice of the peace \$0.50.

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.

Sec. 2. REPEAL. All Acts and parts of Acts in conflict herewith are hereby repealed."

You will note that if we do not watch the fact situations in each case, Mr. Benchhoff's directions might be correct or incorrect. For instance, this new statute provides for the plaintiff to pay \$3.00 in cases involving more than \$50.00 and the defendant to pay \$2.00 at the time of his appearance in similar cases. Thus we would have the \$5.00 fee. But, the next paragraph provides for the plaintiff to pay \$1.00 and the defendant to pay \$1.00 in all cases of \$50.00 or less. You will note that this section as now amended refers exclusively to services of the justice of the peace and does not have anything to do with the services of the constable or sheriff.

Before the 1949 amendment Section 34-107, which provides for fees in the justice courts, each item of service was enumerated and a fee for that particular service charged. The 1949 amendment eliminated all of these enumerations and provided for a flat fee for the plaintiff and a flat fee for the defendant and they were to receive all or any of these services required in a particular case with the exception of those specifically enumerated. Section 34-108 provided for a fee of \$1.00 to be paid by each, the plaintiff and defendant, in cases involving \$50.00 or less, the same to include all constable or sheriff's fees. It is a general rule of law that the last enacted statute prevails over former statutes and that if there is a conflict between the two the latest enactment will be controlling, even if there is no mention of the statutes being repealed. In the 1949 amendment of Section 34-107 the Legislature

George W. Martin
Justice of the Peace
Douglas, Arizona

December 29, 1952
Page Four

specifically said "All Acts and parts of Acts in conflict herewith are hereby repealed." It appears to us that there is a conflict between the 1949 amendment to Section 34-107 and the present reading as quoted above of Section 34-108 respecting cases amounting to \$50.00 or less.

We are therefore of the opinion that the justice of the peace will collect \$1.00 from the plaintiff and \$1.00 from the defendant, when he makes his appearance, in all cases where the amount in controversy, exclusive of interest and costs, is \$50.00 or less. It further appears to us that this does not pay for the constable or sheriff's fees and that the constable or sheriff will be required to charge the regular service fees on these \$50.00, or less, cases as provided in Section 34-106.

This opinion is further strengthened when we take into consideration the last part of Section 34-107, as amended, wherein the Legislature said "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".

Very truly yours,

FRED O. WILSON
Attorney General

CHAS. ROGERS
Assistant Attorney General

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