

OPINION
50-64

May 17, 1950 (OPINION)

FEES

RE: Supreme Court Filing Fees Are Public Moneys

This is in reply to your letter of May 8 addressed to the attorney general relative to the filing fees to be paid through the clerk of the Supreme Court upon appeals.

The question you present is as to the method of handling these fees by the clerk of the Supreme Court.

Section 27-0305 of the 1949 Supplement provides as follows:

"FEES TO BE CHARGED AND COLLECTED AND COLLECTED BY THE CLERK OF THE SUPREME COURT. The clerk of the Supreme Court shall charge and collect in advance a fee of fifteen dollars upon the filing in the Supreme Court of the record in any cause upon appeal, or upon the filing in such court of a petition in any cause seeking the exercise of the original jurisdiction thereof."

Section 27-0306 of the 1949 Supplement reads as follows:

"FEES TO BE DEPOSITED MONTHLY WITH STATE TREASURER AND BAR ASSOCIATION OF THE STATE OF NORTH DAKOTA. The clerk of the Supreme Court shall keep an accurate account of all fees received by him and shall deposit ten dollars of such fees monthly with the state treasurer and five dollars shall be remitted by him to the secretary-treasurer of the bar association of North Dakota."

You will note that the first section quoted provides that the clerk of the Supreme Court shall charge and collect in advance a fee of fifteen dollars and the next section provides that he shall keep an accurate account of all fees received and shall deposit ten dollars of such fees monthly to the state treasurer and five dollars shall be remitted by him to the secretary-treasurer of the bar association.

From a superficial reading of the last section quoted, it would appear that the clerk would have to cash the checks and drafts coming to his office on appeals and then deposit ten dollars with the state treasurer and five dollars to the State Bar Association. However, we do not believe the clerk is required to go through this procedure. It would almost necessitate carrying this money in his personal account and then distribute it from such account. However, the more serious question is whether or not Article 53 of the Amendments to the State Constitution would apply in this case. It provides that all public moneys from whatever director, manager, board, bureau, or institution of the state receiving the same to the state treasurer and deposited by him to the credit of the state and shall be paid out and disbursed only pursuant to appropriation first made by the Legislature.

It is true that this amendment provides that it shall not be construed to apply to fees or moneys received in connection with licensing and organization of * * * and further it is provided that the constitutional amendment shall not be construed to amend or repeal existing laws or acts amendatory thereof concerning such fees and moneys.

However, we do not believe that the exceptions apply to the payment of the filing fees to the clerk of the Supreme Court. The filing fees have no connection with the licensing and organization of lawyers.

Reference has been made to the case of Tooz v. State, 38 N.W.2d. 285. This case, however, does not settle the question. On the contrary it decides that the fee of fifteen dollars to be paid to the clerk of the Supreme Court in the case of appeals is a filing fee. Likewise it was held that the fee of seven dollars and fifty cents to be charged by the clerks of the district court for the filing of actions is a filing fee. Referring to the two sections, as amended, namely 27-0305 and 11-1704, the court said:

"Section 27-0305, N.D.R.C. 1943, as amended and reenacted in section 1, chapter 228, laws 1947, is a complete legal enactment and is not dependent for its validity or meaning upon any other provision.

"The clerk of the Supreme Court shall charge and collect in advance a fee of fifteen dollars upon the filing in the Supreme Court of the record in any cause upon appeal, or upon the filing in such court of a petition in any cause seeking the exercise of the original jurisdiction thereof.' Section 1, chapter 228, laws 1947.

"This provision is complete and may be enforced if all the other provisions of the chapter are stricken out. The same is true with respect to section 11-1704, N.D.R.C. 1943, as amended by section 3, chapter 228, laws 1947.

"We are not required to speculate as to whether the Legislature would have enacted the provisions fixing the amount of fees to be collected by the clerk of the district court and by the clerk of the Supreme Court if those provisions stood alone. The Legislature has specifically said that these provisions may and shall stand and be given full force and effect even though the Legislature was without power to enact any of the other provisions of the chapter and if all such provisions must be rejected and eliminated.

"We are all agreed that the provisions of said sections 11-1704 and 27-0305, N.D.R.C. 1943, as amended and reenacted in said laws 1947 are valid enactments and that it was incumbent upon the clerks of the said district and Supreme Courts to charge and collect the fees prescribed in the provisions as amended and reenacted. This is decisive of the action. The moneys do not belong to the plaintiff and the plaintiff has no interest therein."

The decision in the Tooz Case, supra, definitely holds that the fee of fifteen dollars which the clerk of the Supreme Court must charge in case of appeals is a filing fee; we believe, therefore, that such filing fees are public moneys within the definition of Article 53 of the Amendments and that the exceptions therein do not apply to same.

WALLACE E. WARNER

Attorney General