

**OPINION  
60-134**

October 27, 1960 (OPINION)

JUSTICE COURT

RE: Fees - Plea of Guilty

This is in response to your letter in which you ask what fees may the justice of peace charge under the following set out facts: The justice issues warrant for arrest; the accused pleads guilty, but the justice determines to hear testimony and does hear testimony to establish a prima facie case.

The specific question is whether or not the justice of peace may charge a fee of four dollars for hearing testimony "as a trial of issue" where the accused has pled guilty.

Section 33-0123, 1957 Supplement to the North Dakota Revised Code of 1943, as is material here, provides as follows:

" . . .

1. For issuing summons or warrant of arrest and all proceedings prior to trial, two dollars;
2. For entry of default judgment or sentence upon plea of guilty or order binding over on waiver, two dollars;
3. For trial of issue of fact or preliminary hearing, four dollars;

. . . "

The specific fee scheduled as set out in the above section controls.

The fee for trial of issue quite obviously is where the justice of peace is required to try the issue on a plea of not guilty, and does not include the situation where the justice of peace on his own wishes to hear testimony after a plea of guilty has been entered. While it is true that a justice of peace might wish to hear some testimony to ascertain for himself whether or not the plea of guilty should be accepted, it is not mandatory or required that the justice of peace hear such testimony. Therefore, it would appear that the justice is not entitled to any fee for a trial of issue under these circumstances.

In considering section 33-1218, 1943 Code, which provides that, PLEA OF GUILTY; DUTY OF JUSTICE. If the defendant in a criminal action in a justice court pleads guilty, the court before accepting the plea may examine witnesses to ascertain the gravity of the

offense, and if it appears from the testimony that the offense committed is of a higher grade than that charged in the complaint the court may refuse to accept the plea and may direct a complaint to be filed charging the offense accordingly, and may proceed with a preliminary examination of the defendant as prescribed in the title Judicial Procedure, Criminal."

We could arrive at the conclusion that where the examination of the witness or witnesses discloses the offense is of a higher grade than that with which the accused is charged, that the justice of peace may then be entitled to the fee of four dollars. Even this might be doubtful as violating the due process clause on the basis that the justice might have a pecuniary interest in the result. Where the testimony as a result of the examination does not disclose a crime of a higher grade, he may not charge the fee of four dollars.

It is our opinion that the justice of peace in the instant matter is entitled to charge two dollars for issuing the summons or warrant of arrest, and two dollars for the entry of default or sentence of a plea of guilty, which makes a total of four dollars.

It is our further opinion that he is not entitled to charge the additional fee of four dollars for taking testimony which might be considered as a "trial of issue of fact" where the accused has pled guilty prior to the taking of the testimony.

LESLIE R. BURGUM  
Attorney General