

Justice of the Peace, Fees Of.

It is within the province of the legislature to determine and specify the fees to which a justice of the peace is entitled to receive in any and all cases and to fix the amount thereof in each instance as well as in the aggregate. Under the provisions of Section 4642, Political Code, by the last subdivision, the limit upon and aggregate amount of fees which a justice may receive from the county in any one year is \$500.00.

Helena, Montana, Sept. 7, 1905.

James E. Healy, Esq., County Attorney, Butte, Montana.

Dear Sir:—I beg leave to acknowledge receipt of your letter of September 1, 1905, asking for an opinion from this office upon the following question: Is a justice of the peace entitled to any sum in excess of \$500 for fees earned in criminal cases in any one year?

It is wholly within the power of the legislature to determine and specify the fees to which a justice of the peace is entitled to receive in any

and all cases, and to fix the amount thereof in each instance. The legislature has done this, under and by virtue of the provisions of Section 4642, Political Code. The last subdivision of that section places the limit upon the aggregate amount of fees which a justice may receive from the county in any one year at \$500. It was within the power of the legislature to fix the fees for the various services performed by a justice at so low a rate that the aggregate amount could never reach the sum of \$500 in any one year. But instead of doing this the legislature has fixed the fees at a reasonable rate and then limited the aggregate amount. The claim that this limitation applies only to cases where the justice files his bill against the county cannot be sustained, for the reason that under the provisions of Section 2725 the entire fine when collected becomes and is county property, (considering the matter only with reference to the county), and under the provisions of this latter section the justice would be compelled to turn in the entire fine and then file his bill against the county for his fees. But to avoid this circuitry of action Section 2910, Political Code, provides that he may deduct the costs of the case and pay the residue to the county treasurer, but by this deduction he is nevertheless appropriating to himself money which primarily belongs to the county as effectually as though the entire fine were paid to the county treasurer and then the justice fees repaid to him by action of the board of county commissioners.

It is therefore apparent that when the fees of the justice of the peace in criminal cases amounts to the sum of \$500, he cannot legally make any charge against the county nor retain from the fines collected by him any sum whatsoever for fees in excess of the \$500 which he has received during that year.

Some doubt might be expressed as to the constitutionality of the clause limiting the aggregate amount of fees, but until the law has been declared unconstitutional by a court of competent jurisdiction we cannot do otherwise than to uphold and follow its provisions.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.