

Justices of the Peace—Fees—Bail Bonds—Bonds—Hearings.

The fees of a justice of the peace in criminal cases are limited by section 4926, R. C. M. 1921, and all fees allowed where a hearing is held are \$5.00 together with a fee of \$1.00 for filing and approving bail bond which should be collected from the defendant.

Nick Langshausen, Esq.,
County Attorney,
Winnett, Montana.

December 17, 1927.

My dear Mr. Langshausen:

You have requested my opinion upon several questions submitted by your justice of the peace.

The justice of the peace desires to know whether the \$5.00 fee provided for by section 4926, R. C. M. 1921, in a case where a hearing takes place and witnesses are examined is all the fee to which he is entitled, or whether he may recover \$2.50 for filing the affidavit and complaint and issuing a warrant of arrest.

It is my opinion that the \$5.00 fee provided for in section 4926 is the total fee that may be charged for all services as a committing magistrate. I believe, however, that in the case where a bail bond is approved and filed an additional fee of \$1.00 may be charged the defendant. This was so held by former attorney general Kelly in an opinion appearing in volume 5, Opinions of Attorney General, page 309.

The justice of the peace has submitted several hypothetical cases but they all present the same legal question. For instance, section 4926 provides: "For all services rendered as a committing magistrate where examination is waived, two dollars and fifty cents." This, in my opinion, is the total fee that may be charged with the exception of the \$1.00 for the bail bond which should be collected from the defendant, as above stated.

The next four paragraphs of section 4926, in my opinion, require the same interpretation, and in this connection I desire to call your attention to an opinion appearing in volume 1, Opinions of Attorney General, page 394, wherein it was held that the \$5.00 fee for all services provided in the second paragraph of section 4926 includes the transmitting of the papers on appeal to the district court and that no separate fee may be charged therefor.

The next to the last paragraph of section 4926 relates to the fees in issuing search warrants, and that too, in my opinion, provides for the only fee that may be recovered for the issuance thereof. Of course, if a trial is had independently of the issuance of the search warrant, in my opinion a separate fee may be charged therefor.

Very truly yours,

L. A. FOOT,

Attorney General.