

Opinion No. 114.

Justice of the Peace—Fees—Insanity Proceedings.

HELD: A Justice of the Peace is not entitled to fees for filing the complaint or for transmitting the transcript in insanity proceedings.

June 8, 1935.

Mr. R. F. Cranston
County Commissioner
Lewistown, Montana

You have requested my opinion as to whether justices of the peace are entitled to the following fees in insanity proceedings: "Complaint \$2.50; Transmitting Transcript \$1.50", and whether it is lawful to allow such items on claims presented to the county by justices of the peace.

Section 1431, R. C. M. 1921 provides: "Whenever it appears to the satisfaction of a magistrate of the county that any person within the county is so far disordered in his mind as to endanger health, person, or property, he must issue and deliver to some peace officer for service a warrant directing that such person be arrested and taken before any district judge in the county for examination; provided, that if the district judge is absent from the county wherein such person is arrested, then the said insane person shall be taken before the chairman of the board of county commissioners."

Section 11618 defines a magistrate, while Section 11619 enumerates the following persons as magistrates: 1. Justices of the Supreme Court; 2. Judges of the District Court; 3. Justices of the Peace; 4. Police Magistrates in Towns or Cities.

Insanity proceedings may, therefore, be initiated before any one of the above named magistrates. Where proceedings are initiated before a district judge by a complaint filed with the clerk of the district court, no fee is provided for.

It is the law, we believe, in all jurisdictions, that fees can be collected by public officers only when expressly authorized by law. In 46 C. J. 1017, Section 244, it is stated: "Fees are only collectible when ex-

pressly authorized by law, and an officer demanding fees either from the public, or the state or other governmental bodies, must point to a particular statute authorizing them. No usage in regard to making such charges can legalize them without such authority."

The same rule applies to county officers: "A county officer claiming compensation or fees must be able to show, not only that the services were performed for the county as such, but also a statute or a constitutional provision authorizing compensation for the particular services in question, and which is in force at the time the services were rendered, or else a contract therefor authorized by law." (15 C. J. 496, Section 161.)

And also to justices of the peace: "The compensation of justices, whether made in the form of salary or of specified fees, is entirely regulated by constitutional provisions or statutes, which are so diverse in the various states that few generally applicable rules on the subject can be laid down. These statutes are to be strictly construed, and no compensation can be allowed for services or incidental expenses which are not expressly provided for by law." (35 C. J. 468, Section 28.)

In *United States v. Shields*, 153 U. S. 88, the Supreme Court of the United States said: "Fees allowed to public officers are matters of strict law, depending upon the very provisions of the statute. They are not open to equitable construction by the courts, nor to any discretionary action on the part of the officials."

In *Crocker v. Supervisors*, 35 Wis. 284, it was stated: "Officers take their offices *cum onere*, and services required of them by law for which they are not specifically paid must be considered compensated by the fees allowed for other services. This principle is well settled, as will be seen by examination of the several authorities cited to this point by counsel for the defendant. * * * And in such case the board of supervisors have no authority to make extra allowances to the officer, even though they should be of opinion that he ought to have them."

These decisions and other similar

decisions were quoted with approval by our Supreme Court in *Wight v. Meagher County*, 16 Mont. 479; see also *State v. District Court*, 49 Mont. 425, 427.

In view of these authorities it becomes necessary to point to some specific provision authorizing the payment of the fees claimed by justices of the peace in insanity cases. The sections of the Code authorizing the payment of fees to justices of the peace are 4924, 4926 and 4927 R. C. M. 1921. In none of them do we find any specific provision authorizing the payment of the fees in question. In civil cases justices of the peace must collect \$2.50 when summons is issued but no summons is issued in insanity cases. A warrant for the arrest of the person suspected of insanity is issued and while this may tend to color the proceedings as criminal, Section 4926, dealing with fees in criminal actions, does not authorize the payment of a fee for issuing a warrant of arrest nor is there any provision in Section 4927, which covers miscellaneous fees. Neither do I find any provision in these sections for the payment of \$1.50 for transmitting transcript. The provision in Section 4926, authorizing payment of \$1.50 for transmitting papers on appeal, clearly does not apply as the proceeding is in no sense an appeal.

We appreciate the fact that justices of the peace, as a rule, are not overpaid and in the smaller counties the fees authorized by law are scarcely sufficient. As stated, however, in *United States v. Shields*, *supra*, we have no discretion in the matter and we are therefore compelled to answer your question in the negative.