

Opinion No. 41-3875

August 18, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Scott H. Mabry Assistant District Attorney Albuquerque, New Mexico

{*90} Receipt is acknowledged of your letter inquiring as to whether court costs in the J. P. court should be charged against the complainant or the defendant in a peace proceeding.

You state that it has been the practice in years past to advise the justices of the peace to require the costs to be paid by the complainant. The statute is silent upon this question, and apparently the matter has never been brought before the Supreme Court for a decision. However, I believe that the practice which has been followed in years past is the correct practice to follow, and that the costs of a peace proceeding should be collected from the complaining party. Such a proceeding is similar to a preliminary hearing and the matter is to be finally decided by the District Court.

Under Section 79-1005 of the 1929 Compilation, the District Court, when both parties appear and after hearing the evidence, may either discharge the bond or require a new one for a time not exceeding six months, and {*91} award the costs against either the complainant or defendant, as justice may require. By collecting the costs from the complainant, the justice of the peace is assured that he will not have to wait for the costs, and the final adjudication as to the costs must necessarily wait upon the District Court judgment.

This conclusion is based to some extent upon Bradley vs. Malen, 164 N.W. 24, 37 N.D. 295, in which it is stated:

"The statute contemplates that the final order and judgment (including the judgment for costs) shall be entered in the District Court."

Trusting this sufficiently answers your question, I am

By C. C. McCULLOH

Asst. Atty. General