

Opinion No. 55-6165

May 19, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. John Love, County Clerk, Lea County, Lovington, New Mexico

Respecting your inquiry concerning House Bill 353 (Chapter 289) as same affects special deputy clerks for Class B counties, please be advised that an annual amount of \$ 4,800.00 was appropriated for the chief deputy, together with \$ 6,000.00 to be used to employ a deputy or deputies either full or part time when the need therefor arises and the Board of County Commissioners so determine. The salaries of said deputies shall be determined by the County Commission and adjusted according to the needs of the office. The total number of deputies that can be hired depends upon the County Commission together with staying within the total sum of \$ 6,000.00, excluding the amount appropriated for the chief deputy. Section 15-43-9, N.M.S.A., 1953, also provides a manner for hiring additional deputies when the occasion arises.

This Act goes into effect June 10, 1955. However, if the salary proposed for the county clerk is an increase over that provided at the beginning of his term, the excess is not constitutional (Art. 4, Sec. 27, N.M. Constitution) until January 1, 1957. This does not apply to the appropriation for deputies and employees (See State ex rel. Gilbert v. Board of Commissioners of Sierra County, 29 N.M. 209).

It should be stated further with respect to the county clerk, the county assessor, county treasurer, county sheriff and probate judge that Senate Bill No. 102 (Chapter 267) provided for additional compensation for these county officers serving as a county advisory board in Class B counties from July 1, 1955 until December 31, 1956. This office in Opinions No. 3906, 4031, 4293, 4651, 4993 and 5709 has held that an officer may legally perform additional duties in connection with a separate position which are not incidental to his primary office and be paid additional compensation therefor. I add this to this opinion to clarify any possible questions that may be in your mind in this regard although not set forth specifically in your request.

Hoping this satisfactorily answers your inquiry, I remain

By J. A. Smith

Assistant Attorney General