

Opinion No. 16-1844

July 3, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. A. G. Whittier, Traveling Auditor, Santa Fe, New Mexico.

Fees paid to clerks and sheriffs considered as public moneys from the moment they are received.

OPINION

{*405} I have before me your letter of the first instant, in which you ask, in substance, whether the provisions of Section 1 of Chapter 57 of the Laws of 1915 include county clerks and sheriffs, who receive fees for definite services performed, which fees are to be by them turned over to the county monthly. In other words, as you say, you ask whether the fees received by those officers are public moneys immediately upon their receipt, or are to be considered public moneys only when transferred to the treasury.

It appears to me that, inasmuch as the clerks and sheriffs are forbidden by the Constitution to receive to their own use any fees or emoluments other than the annual salary, the fees collected must be considered as public moneys from the moment that they are received. If we should say that they do not become public moneys until paid to the county treasurer, what answer could we make to the question as to who owns the money during the interval between collection and paying over to the treasurer?

This view is strengthened by reference to Section 8 of Chapter 12 of the Laws of 1915, by which it is provided that all county officers shall charge and collect all fees, etc., authorized by law for official services rendered by them, "and shall keep an accurate and itemized account thereof," and pay the same over before the tenth day of each month.

Therefore, I am of opinion that the county clerks and sheriffs should keep a cash book, as required by the first section of said Chapter 57, in which must be entered daily all items of receipts and disbursements, and which must be balanced daily so as to show the money on hand at the close of each day's business.