

Opinion No. 17-1910

January 5, 1917

BY: H. L. PATTON, Attorney General

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

District Court May Pay Deputy Clerk From Court Fund.

OPINION

Your letter of recent date asking for an opinion on the subject herein discussed is at hand and the contents noted. The facts stated by your letter disclose that, since the passage of Chap. 12, Laws 1915, known as the Salary Act, the County Clerk of Sandoval County has received compensation for the discharge of duties as Clerk of the District Court of said county in the amount prescribed by said act for counties of that class. It further appears that Mr. T. K. D. Maddison, of Albuquerque, acting under the authority of the District Judge of the district, assumed and discharged the duties of Clerk of the Court during a part of the same period and that he has been paid out of the court fund for one year's service at the rate of \$ 50.00 per month amounting to \$ 600.00.

The question of the right of the clerk to receive compensation for this service is involved. Under Art. 6, Sec. 22 of the State Constitution, it is provided that County Clerks shall perform the duties of the District Court. Under Sec. 2 of the Salary Act provision is made for the payment of additional compensation to County Clerks for the performance of the duties of the Clerks of the District Court in the various counties according to their classification. In the same section and in this connection appears the following language: "Such amounts shall be payable only to the deputy performing such services." In the case of State ex rel. Garcia v. Board of Commissioners, 21 N.M. 632, our Supreme Court in its opinion at page 648, quotes the language of the act which I have quoted, and while not directly passing upon this identical question, strongly indicates that payment should be made only to the deputy performing the services. The services as clerk of the Court were not performed by a deputy appointed by the County Clerk. In my opinion, the compensation fixed by the Salary Act was payable to only such deputy. It follows that payment should not have been made to the County Clerk and that he should be required to return the amount paid to him.

Section 1369, Code 1915, provides for the creation and disbursement of the court fund. The disbursement of this fund is safeguarded to the extent that the county treasurer shall make payments therefrom only upon the certificate of the clerk of the court that an allowance has been made by the court. The only restriction upon the authority of the court is that no certificate shall be issued unless there is sufficient money in the fund to meet the same. The court fund is under the absolute control of the court. In my opinion the purposes for which this fund is disbursed are not proper subjects of inquiry from

your department. Again since this payment was not made pursuant to the provisions of the Salary Act, the amount paid does not have to conform thereto.

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