

Opinion No. 20-2581

May 6, 1920

BY: H. S. BOWMAN, Assistant Attorney General

TO: Mr. A. G. Whittier, State Traveling Auditor, Capitol Building.

Fees and Expenses of Weighmasters.

OPINION

We have your letter of the third instant regarding the question of fees collected by weighmasters and their deputies and expenses incurred by them in the performance of their duties, and in reply will advise you as follows:

We have carefully examined the statutes, Sections 5819-5856, Code of 1915, and also the two opinions of former Assistant Attorney General C. A. Hatch in connection with this matter, and find that we are unable to agree with the former opinions holding that special deputy weighmasters are entitled to fees collected in performance of their duties.

Section 5831, Code of 1915, provides for the collection of fees by deputy weighmasters for their own use. This section is a part of Chapter 82, Laws of 1913. Section 1, Article 10 of the State Constitution provides in part as follows:

"And no county officer shall receive to his own use any fees or emoluments other than the annual salary provided by law, and all fees earned by any officer shall be by him collected and paid into the treasury of the county."

Section 9 of Article 20 of the State. Constitution provides:

"No officer of the state who receives a salary shall accept or receive to his own use any compensation, fees, allowance or emoluments for or on account of his office in any form whatever except the salary provided by law."

Section 6 of Chapter 12, Laws of 1915, known as the salary law, reads as follows:

"No county officer shall accept or receive to his own use or for or on account of any deputy or deputies, clerk or clerks appointed by him or employed in his office, or for or on account of expenses incurred by him, or for or on account of his office, any salary, compensation, fees or emoluments in any form whatsoever other than as by this act allowed."

It is apparent from a reading of the foregoing quotations from the constitution and laws, that it was the intention of the legislature to abolish the fee system in so far as it applied

to the salaries of county officials in this state. This intention is as clearly indicated in Section 6 of Chapter 12, Laws of 1915, as it is possible for language to express, and not only are officers prohibited from receiving fees, but they are also prohibited from receiving any compensation, allowance or emoluments in any form, either for themselves or their deputies or their clerks, except such as provided by that particular act.

We are of the opinion, therefore, that Section 6 of Chapter 12, by necessary implication, repeals Section 5831 allowing certain fees to be collected and retained by deputy weighmasters in so far as these officials are not required to pay such fees over to the county treasurers. Such being our holding, the sheriff would then be compelled to perform the duties of weighmaster or appoint deputies to perform such duties who must necessarily be paid by him, unless such appointments are made from his regular deputy sheriffs, provisions for which are also made in the salary law.

In our opinion, also, the foregoing Section 6 of Chapter 12, repeals Section 5822 providing for the payment of certain expenses out of the current expense fund of the county, as no provision for such expenditures is made in said Chapter 12, Laws of 1915. The only expenses that would be authorized to be incurred by weighmasters would be those that are included in the provisions of this act.

To summarize:

Neither the weighmaster himself nor any of his deputies are authorized to retain any of the fees collected by them in the performance of their duties.

2. Neither the weighmaster nor any of his deputies are authorized to collect from the county, expenses incurred by them under the authority contained in Section 5822, Code of 1915. The only expenses for which they can be reimbursed are those provided for generally in Chapter 12, Laws of 1915.

The opinions of former assistant attorney general C. A. Hatch to which reference has been heretofore made appear as number 2037, page 91, and number 2045, page 125, Report of Attorney General 1917-1918.