

Opinion No. 31-241

August 15, 1931

BY: Frank H. Patton, Asst. Attorney General

TO: Hon. James N. Bujac, Asst. District Attorney, Carlsbad, New Mexico.

{*96} Reference is made to your letter of August 12th, in which you made inquiry for the guidance of the Board of County Commissioners of Eddy County, as to our construction of certain portions of Section 33-3203, New Mexico Statutes, Annotated, 1929 Compilation, regarding the salaries of County Clerks and additional allowances for a deputy or deputies.

We are not surprised that you find this section confusing; and, as a matter of fact, we believe each and every county in the state is operating under a different system.

Your attention, however, is directed in particular to that provision in the section to the effect that, until relieved by law from the performance {*97} of the duties of clerks of the district courts, the county clerks of the several counties in the state shall respectively receive additional compensation as follows: -- Then follows the amounts specified for the various counties.

Also, we must direct your attention to that provision which provides that such amounts shall be payable only to the deputies performing such services.

We do not believe that we can properly construe or interpret this section and thereby arrive at its true meaning, without also giving consideration to Section 22, Article 6 of the Constitution of the State of New Mexico, which provides:

"Until otherwise provided by law, a county clerk shall be elected in each county, who shall, in the county for which he is elected, perform all the duties now performed by the clerks of the district courts and clerks of the probate courts."

It has always been the opinion of the writer that the county clerk was only entitled to receive the salary specified by law, and that such clerk was not entitled to any additional compensation, even though such county clerk himself actually performed the duties of the clerk of the district court. In other words, when the county clerk is elected he is not only elected as county clerk of the county, but, under the constitution, he becomes automatically and by operation of law, the probate court clerk and the district court clerk.

However, if the duties in the various counties, by reason of the volume of business, are such that it is necessary to employ additional assistants or additional deputies, the law has provided that the county clerk may employ some person to do such work and has provided compensation therefor.

The law does not contemplate the employment of such additional deputies to perform the services of clerk of the district court, unless it is of such a nature that the county clerk himself, by reason of his volume of work, is unable to so perform such duties.

And when, therefore, the duties in the office are of such a nature that both those of the county clerk and those of the district clerk can be performed by the county clerk himself, then in our opinion it devolves upon the county clerk to act as district court clerk in addition to his duties as county court clerk and he is not entitled to employ an additional deputy to perform such services.

Our answer, therefore, to your first question in the last paragraph of your letter would, in view of the foregoing, be in the negative.

Your second question is whether a deputy should be employed to perform the duties of a district court clerk. Our answer to this question is yes, provided, however, such employment is, in the opinion of the county clerk, necessary.

Your third question, as to whether the salary to be paid to the county clerk is limited to \$ 2200.00 a year, is in our opinion to be answered in the affirmative, in view of all the foregoing and the constitutional provision above mentioned.

As above stated, we believe the practice is not uniform in the counties, and we believe the county commissioners should take some action at this time to establish a uniform practice and bring the matter properly before the courts in order that each and every county in the state should have some system whereby they may be properly guided in the future.