

Opinion No. 35-858

January 15, 1935

BY: FRANK H. PATTON, Attorney General

TO: Mrs. Elizabeth F. Gonzales, Secretary of State, Santa Fe, New Mexico.

{*35} In your letter to this office under date of January 15th, you ask for our opinion upon whether or not a county clerk has the right to make a charge for comparing registration lists when such comparing is done during office hours.

It is our opinion no county clerk in New Mexico, has any right to make a charge for such services. Article 10, Section 1 of the constitution of New Mexico provides 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 33-4306 of the New Mexico Statute Annotated Compilation of 1929 provides what fees shall be charged and received by the county clerk of the various counties in the State of New Mexico. A careful consideration of this last statute does not reveal any wording which would authorize the charging by the clerk of a fee for comparing registration lists, to which you refer in your inquiry.

The Supreme Court of the State of New Mexico in the case of State ex rel Baca vs. Montoya 20 N.M. 104, states the following rule:

"The settled rule in the United States is: 'that the rendition of the services of a public officer is deemed to be gratuitous, unless a compensation is fixed therefor by statute,' Throop on Public Officers, Section 446."

By: J. R. MODRALL,

Assistant