

Opinion No. 41-3900

September 15, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Arthur Livingston Assistant District Attorney Santa Fe, New Mexico

{*98} In your letter of September 12, you refer to Chapter 104, Session Laws of 1941, and request our opinion as to the duties of the clerk of the district court when a will is filed for probate in the district court pursuant to the authority granted by Chapter 104 of the Session Laws of 1941.

Chapter 150 of the Session Laws of 1939 authorized judges of the district courts throughout the state to appoint a clerk of the district court. Prior to the enactment of this law, the county clerks of the several counties served as ex-officio clerks of the district court and the county clerks of the several counties are still charged with this duty, in the event the judge of the district court has not exercised his right to appoint a clerk of the district court in accordance with the provisions of the 1939 Act.

Section 7 of Chapter 150 of the Session Laws of 1939 reads as follows, to-wit:

"In all counties of this state where no clerk of the district is appointed thereunder, the duties of the clerk of the district court shall be performed by the respective county clerks as heretofore and as is or may be provided by law."

In view of this section of the 1939 Act, it occurs to me that it was the intent of the Legislature for clerks of the district court to perform all services previously performed by the county clerk as ex-officio clerk of the district court. This 1939 Act was, of course, in effect at the time the Legislature passed the 1941 Act, but in that the Legislature is presumed to have full knowledge of all previous legislation, 59 C. J. 1008, I conclude that it was the legislative intent to charge the various clerks of the district court with all the duties previously performed by county clerks in all probate proceedings which are originally filed in the district court pursuant to the authority granted by the 1941 Act. It occurs to me that a absurdity would result if we said the county clerk was charged with the performance of ministerial duties in connection with probate matters which are originally filed with the clerk of the district court.

Trusting that the foregoing answers your inquiry, I am,

By HOWARD F. HOUK,

Asst. Atty. General