

**Opinion No. 43-4224A**

February 4, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico

You have requested an opinion of this office in your letter of January 27, 1943, concerning whether or not clerks of the district courts or their deputies are entitled to retain for their personal benefit fees collected as a result of preparation of transcripts.

I call your attention to the provisions of Section 16-346 of the New Mexico 1941 Compilation wherein it is provided that clerks of the district courts shall be entitled to receive fees in civil matters for making transcripts. It is, therefore, clear that it was the contemplation of the Legislature that the district court clerks should prepare transcripts and be entitled to charge a fee therefor.

Section 16-349 of the New Mexico Compilation further provides that such fees shall be deposited with the county treasurer who must place them to the credit of the court fund.

In view of the above it is clear that the clerks of the district court have no authority under our law to retain such fees or money received from the preparation of transcripts and that such amounts must be paid to the county treasurer irrespective of whether the work is done during or after regular office hours. Also see Art. 10, Sec. 1 and Art. 20, Sec. 9 of the N.M. Constitution, and the cases of Ward v. Romero 17 N.M. 88; 125 Pac. 617; State ex rel Delgado v. Romero 17 N.M. 81, 124 Pac. 649; Peck v. Velarde 39 N.M. 179, 43 Pac. (2) 377.

By HARRY L. BIGBEE,

Asst. Atty. General