

Opinion No. 43-4221

February 2, 1943

BY: EDWARD P. CHASE, Attorney General

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

We are in receipt of your letter of January 27, 1943, in which you ask whether or not County Officials may issue certified copies of public records without charge to the American Red Cross, in the event this service is for the benefit of indigent persons.

Sections 13-108 and 13-111 of the 1941 Compilation prescribes the fees to be charged by the County Clerk for certifying public records. By these sections the Clerk is given the absolute duty to collect these fees, and has no right, unless otherwise authorized, to waive the payment of such fees.

I have examined with care the provisions of our statutes, and do not find any authority given to the Clerk to waive this fee, as is done by Section 19-817 and Section 29-114 of the New Mexico Compilation, with respect to filing fees and jury fees.

It is therefore my opinion that the County Clerks have no authority to issue certified copies of public records without charge to the American Red Cross.

As to whether or not the County Commissioners should pay this fee, this is a matter vested in the discretion of the County Commissioners by Section 73-201 of the 1941 Compilation, and would have to be determined by them in each of the various counties.

You will note that I have limited my answer to the right of the County Clerk to issue certified copies, as he is the one upon whom this duty is imposed, and would be the only person who could do this, unless the records involved were in the custody of some special board or agency, and as you have not indicated which board or agency you might have in mind, I have not gone into this.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General