

Opinion No. 53-5665

February 11, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Richard F. Rowley, Esquire District Attorney Ninth Judicial District Clovis, New Mexico

{*56} This is in answer to your request for an opinion upon the questions of (1) whether the county clerk is prohibited from making a definite charge for issuing a marriage license out of office hours, which charge he keeps for his own use, (2) whether or not a county clerk is prohibited by law from accepting a gift of money from any one after he has issued a marriage license which was not issued during office hours, if such sum was given to him purely as a gratuity, and (3) whether or not a county clerk or deputy county clerk owes any obligation to issue marriage licenses after the regular office hours.

Art. 10, § 1, New Mexico Const: tution, provides, in part, as follows:

". . . 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."

Sec. 15-4112 N.M.S.A., 1941 Compilation provides that no county officer shall receive to his own use or for on account of his office any salary, compensation, allowance, fees or emoluments in any form whatsoever other than authorized by law.

Sec. 15-4126 N.M.S.A., 1941 Compilation provides that all county officers of the various counties in New Mexico shall establish and maintain their offices and headquarters for the transaction of the business of their respective offices at the county seat of their respective counties and shall there keep all the books, papers and official records pertaining to their respective offices; provided, that such offices shall be provided for the officers at the expense of the respective counties.

It is therefore the opinion of this office that a county clerk can only charge and accept the statutory fee (\$ 2.50) for issuing a marriage license, regardless of the hour so issued, for the performance of such official act, and no sums in the form of an additional charge or gratuity can be accepted by such public official. The county clerk owes no obligation to perform official acts {*57} outside of regular office hours.

I trust this answers your inquiry.

By: William J. Torrington

Assist. Attorney General