

Opinion No. 53-5804

August 25, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable C. C. Chase, Jr. District Attorney Third Judicial District Second Floor Court House Las Cruces, New Mexico

{*211} In your letter of August 12, 1953, you request an opinion for the County Treasurer of Dona Ana County, Mr. L. Tracy Fox, as to whether the County Treasurer or the County Commissioners has the authority to set the salary of his deputy. I have checked all of the laws relative to the powers of the County Commissioners and do not find any statute which gives the County Commissioners such power to set the salaries of the deputies of the County Treasurer.

Under Section 7-233, N.M.S.A., 1941 Compilation, I find the following language which is pertinent to your question:

"* * * Hereafter the state treasurer and the treasurer of each county of this state shall each appoint a deputy treasurer, or more than one if so provided by law, which deputy may be removed at the pleasure of the treasurer so appointing such deputy. Such deputy treasurers shall take the oath of office as is required of the treasurers so appointing such deputies and shall receive such salary as is provided by law. * * *"

According to your letter one of the deputies is receiving the sum of \$ 2760 per annum and it is desired to increase his salary to \$ 2880. After talking to Mr. Tracy Fox here in the office I ascertained from him that he had provided in his budget for the increase of this deputy's salary and he assured me that he had and the money for the increase was in the budget, which budget is approved.

Under Section 15-4103, N.M.S.A., 1941 Compilation, pocket supplement, under Counties of the First Class, the Treasurer and ex officio collector for Counties of the First Class is allowed the sum of \$ 3600 for additional deputy or deputies.

In the case of **Taylor vs. Board of County Commissioners of Union County**, reported in **44 N.M. 605, 107 P. 2d 121**, the appellee, who was a Deputy County Clerk of Union County, filed a claim with the County Commission of Union County {*212} for \$ 750 asserted to be due him for back salary as Deputy County Clerk of Union County. The claim was disallowed and appeal was taken to the District Court under Section 33-4238 of the 1929 Compilation, wherein the District Court reversed the Order of said Board and entered judgment for appellee (claimant) for the amount claimed, and an appeal was prosecuted to the Supreme Court. The Supreme Court held that the Board of County Commissioners of Union County had no authority to demand and enforce the reduction in the salary of appellee, as Deputy County Clerk, though done with the consent and assistance of the Clerk. The Supreme Court also held that the County

Clerk had the authority to employ a deputy or deputies, but that the County Commissioners cannot reduce salaries of deputies when there is a shortage of funds to pay their salaries but instead should resort to the current expense fund or prorating the funds available in case the current expense fund was insufficient.

It is the opinion of this office that the two pertinent statutes herein above cited, fully authorize a County Treasurer to increase the salary of his deputy or deputies if he has requested the increase in his budget and is not exceeding the amounts as provided by law.

Trusting that this fully answers your inquiry, I remain

By: Hilario Rubio

Assist. Attorney General