

Opinion No. 68-77

July 24, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: E. T. Johnson Court Administrator Supreme Court of New Mexico Supreme Court Building Santa Fe, New Mexico 87501

QUESTION

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1. Section 16-3-54, N.M.S.A. provides that district court clerks are not accountable for certain collected fees except to the federal government. I am informed that some clerks have considered this as a source of personal income. Effective 1 July 1969, the section is repealed and replaced by a new Section 16-3-30, which omits any reference to accountability. What will be the proper disposition of such fees as are in excess of those remitted to the federal government?

2. Section 16-3-24 (effective 1 July 1969) provides for investment of litigant funds in the hands of the district court clerk "as prescribed by regulation of the director." It appears that in the past, some districts have considered this as a legitimate source of income for use by the district courts. What will be the proper disposition of the income from such investments?

CONCLUSIONS

1. See analysis.
2. See analysis.

OPINION

{*126} ANALYSIS

Article XX, Section 9, Constitution of New Mexico provides as follows:

"No officer of the state who receives a salary, shall accept or receive to his own use any compensation, fees, allowance, or emoluments for or on account of his office, in any form whatever, except the salary provided by law."

In our opinion this constitutional provision precludes a district court clerk from retaining the excess fees described in your first question. It is our opinion that these fees must be handled in the manner provided for in Section 16-3-25, N.M.S.A., 1953 Compilation (1968 Interim Supp.) which becomes effective July 1, 1969. That section requires a

district court clerk to deposit all fees received in a bank account in the name of the state treasurer of New Mexico.

Section 16-3-24, N.M.S.A., 1953 Compilation (1968 Interim Supp.) which is effective July 1, 1969 provides as follows:

"Each district court clerk shall open a trust fund checking account, designated as the 'court clerk trust account', in a bank which is a member of the federal deposit insurance corporation. Not later than two [2] working days after receipt, the district court clerk shall deposit to this account all money which belongs to a litigant and all money which might be refunded to a litigant. Whenever the district court, by written order filed with the clerk, authorizes payment of money to a litigant from the court clerk trust account, the district court clerk shall issue his check on the account in accordance with the order. As prescribed by regulation of the director of the administrative office of the courts, money in the court clerk trust {^{*127}} account may be invested by the district court clerk in obligations of the United States or in federally insured bank or savings and loan association savings accounts."

Litigant money is to be deposited in a "court clerk trust account." The important thing here is that this is a trust account. In our opinion therefore the income from this trust must insure to the benefit of the trust and therefore the income may not be retained by a district court for its use or benefit.

By: Roy G. Hill

Deputy Attorney General