

Opinion No. 12-913

June 21, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Eugene Kempenich, Chairman, Board of County Commissioners, Peralta, N. M.

FEES AND SALARIES OF COUNTY OFFICERS.

All fees collected by county officers must be paid into county treasury, and with some exceptions they can receive no compensation until salaries are fixed by the legislature.

OPINION

{*50} I have received your letter of yesterday, and as stated before I have no disinclination personally to advise with you, and in view of the prolonged absence of Mr. Griffith I believe that he would make no objection to what otherwise might seem like an intrusion upon his jurisdiction.

I fear that there is nothing which you can do to relieve those {*51} county officers who have been paid by fees and commissions. I took the view that until the legislature acted the former laws would all continue in force and the officers be entitled to receive the compensation previously provided; but when the matter was taken into the supreme court of the state, that court decided differently, and held that under the provisions of Section One of Article X of the Constitution all fees earned by county officers must be paid into the county treasury, and they could receive no compensation for their own services until it should be fixed by the legislature, and must be fixed at an annual salary. I am of opinion, however, that this is not applicable to officers who received plain and simple salaries, like the county school superintendent, and that he may be paid his salary as fixed under the old law. This may also be said of probate judges, and probably of county commissioners so far as their salaries are concerned, but I do not believe that the county commissioners can have their mileage. All of the other county officers will have to go without any compensation for their services until the legislature fixes their salaries. I think that it would be lawful to reimburse the sheriff for money actually paid out by him for necessary expenses, such as feeding prisoners, but he cannot receive anything in the way of profit on such matters, or anything in compensation for his own services.

I have no doubt that the legislature at its next session will promptly adopt an act to provide for these salaries, and submit it to the Governor early in the session, so that in some form it will surely become a law.