

Opinion No. 14-1184

April 8, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. C. P. Mitchell, County Clerk, Portales, New Mexico.

COUNTY OFFICERS.

County officers advised to make quarterly settlements of fees collected.

OPINION

{*41} I have today received your letter of the 6th inst., in which you state that a careful search of the statutes and of the Constitution fails to reveal the time when a county officer must turn in and account for the fees earned by his office, and asking me to advise you as to when such accounting must be made, citing the provisions of the law. You also say that you have consulted with the District Attorney of your district and have failed to receive any satisfactory answer to your question.

I have felt compelled, as a general rule, to refrain from giving advice to county officers as the District Attorney is their statutory legal adviser and is quite independent of the Attorney General, and perhaps I ought, in this case, first to ascertain from Mr. Scott what answer he did give you which you consider not satisfactory, but I am so certain that what he has said, or would say on this question, must be substantially the same as my own answer that I will make an exception, at the same time sending him a duplicate of this letter that he may understand that I do not intend or desire to intrude upon his statutory jurisdiction.

I believe there is no statute in New Mexico directly applicable to the discharge of the duty which, under the decision of the Supreme Court of the state, is imposed upon county officers by Sec. 1 of Art. X, of the Constitution. That is the section which declares that "All fees earned by any officer shall be by him collected and paid into the treasury of the county." The Supreme Court has declared, in substance, that this provision is self-executing and that it is the duty of each county officer who collects any fees earned by him to pay them to the treasurer of the county. As to when he shall do this would appear to be governed by the general rule as to money collected by any agent for another. In the absence of any distinct agreement any money so collected should be paid over within a reasonable time, and I do not see how, in the present condition of our law, anything more definite can be said.

There is, however, a section of the law, which is still in force, to be found as Sec. 12, on page 305, of the Compiled Laws of 1897, which might well be taken as a guide, and is probably the only thing at all approaching this subject anywhere in the statute. That section requires all county and precinct officers to make and file with the probate clerks

of their counties, quarterly statements showing in detail the amounts of all public moneys received, collected or disbursed by {*42} them, which statement must be verified by oath. With this statute in view, I advise that quarterly settlements be made.