

Opinion No. 15-1413

January 6, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. A. B. Baca, Socorro, N. M.

As to interest on county funds deposited in a bank.

OPINION

{*10} I have received your letter in which you ask if I would give you advice as to how you may proceed to get some help in the matter of the expenses of your office as assessor. Quite a long time ago, I sent an opinion to all the district attorneys in the hope that they would establish some uniformity of practice in the different counties, in which I advised that the county commissioners might advance money to the different county officers to enable them to keep their offices running until the Legislature should act on the question of salaries, being careful to restrict such allowances to what was absolutely necessary so as to avoid subsequent confusion and difficulty in the adjustment of accounts when the Legislature might act.

I know of no other way in which you can get any help in the matter of the expenses of your office.

You further say that the collector and treasurer seems to think that he has a right to pay only such warrants as to him seems best, and keeps the money of the county in banks all the time and reports no interest received on the same, as to the legality of which you ask my opinion, and also whether the treasurer is not under obligation to collect interest on funds so held in banks.

I do not understand how it can be that a Treasurer should make any discrimination as to the payment of warrants. A warrant regularly drawn by the proper county officers, entitles the holder to the money, and the treasurer has no right to refuse to pay it or to pay any one warrant, or class of warrants, in preference to any other. As to his obtaining interest on money deposited in banks, I believe there is no statutory provision that compels him to obtain such interest, but if he does get such interest, it belongs to the county and not to him, and should be accounted for as part of the county funds in his hands, as you will see by reference to Section 10 of Article VIII of the constitution. That section provides that any public officer making any profit out of public moneys, shall be deemed guilty of a felony and shall be disqualified to hold public office, and further that all public moneys not invested in interest-bearing securities, shall be deposited in banks "and the interest derived therefrom shall be applied in the manner prescribed by law." This does not {*11} distinctly say that interest must be obtained on deposits, but if any is obtained, it does not belong to the officer who deposited the money, but to the public treasury.