

Opinion No. 15-1486

March 30, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Hon. K. K. Scott, District Attorney, Roswell, New Mexico.

As to settlement of county clerks with the county as to salary under the terms of the salary bill of 1915.

OPINION

{*66} I have today received your letter of the 27th inst. enclosing two others, one from W. M. Atkinson, Chairman of the Board of County Commissioners of Chaves County, and the other from R. F. Ballard, County Clerk, both on the subject of the settlement of the county clerk with the county under the terms of the salary bill recently adopted by the legislature.

It is not at all surprising that Mr. Atkinson, when contemplating the large total amount claimed by the county clerk, should think {*67} that the law could not intend so much of an allowance, but upon careful examination of the act and of what is set forth in your letter and the other letters, I am compelled to agree with you that Mr. Ballard is correct in his claim, although it reaches the figure of \$ 7000 per annum. It is to be borne in mind, however, that of the \$ 7000, in the future only \$ 4200 will go to the clerk as \$ 2800 will be paid only to the deputies, while as to the past he seems to be entitled to the full amount claimed when we take into account the clause in Section 9 which says that "each officer may take credit for all amounts allowed to him in any form, or on any account, under the terms of this act, as applicable to the time prior to the passage hereof." It may well be, as a matter of fact, that the legislature did not intend such a result as is claimed by Mr. Ballard, but as a matter of law we can ascertain the legislative intent only from what is to be found in the statute, and I will, as briefly as possible, state what is to be found in the statute, not for the purpose of enlightening you or Mr. Atkinson or Mr. Ballard, who all seem to know very clearly what is in the statute, but because, as suggested by you and Mr. Atkinson, this matter is one of state-wide importance and I want to show the reasons for the conclusions which I have reached and hereinbefore stated.

The salary bill provides in Section 2 thereof, that in counties of the first class the county clerk shall receive a salary of \$ 3000 and \$ 1000 additional for deputies, and further, until relieved by law from the performance of the duties of clerks of district courts, he shall receive additional compensation in counties of the first class to the amount of \$ 1200 per annum. It is further provided that whenever during any calendar year the fees earned and turned into the county treasury by the county clerk, exclusive of those derived from the district court, shall exceed in counties of the first class the sum of \$ 4000, a deputy or additional deputy may be employed upon authority of the board of

county commissioners at a salary to be fixed by it, which shall in no event exceed \$ 75 per month; and further that in such counties where the fees derived from the district court, exclusive of fines and forfeitures, during any calendar year, shall exceed \$ 2500, an additional deputy may be employed at a salary of not to exceed \$ 75 per month. These several salaries added together make a total sum of \$ 7000. Under the provision contained in Section 9 of the act, quotation of which has been already made herein, Mr. Ballard is authorized to take credit for this full amount as it appears that the fees earned by him and turned into the county treasury greatly exceed the respective limits of \$ 4000 and \$ 2500 for the two different kinds of fees. I can see no escape from this conclusion. As to the past, the provisions authorizing the employment of deputies cannot be exactly applicable because the time has gone for employing them, and we are not informed as to the means employed by Mr. Ballard to get all the work done. He may have been able to get the services of competent deputies for even less than the amounts specified in the act, but Section 9 allows him to take credit for all amounts allowed to him in any form or on any account under the terms of the act for the time prior to its passage.

The suggestions made by Mr. Atkinson would seem to have more force if applied to the future. One of the \$ 75 deputies may be employed {*68} upon authority of the board of county commissioners and it is not at all clear that the county commissioners may not have some discretion as to this employment, and certainly they have discretion as to the fixing of the salary. There is no such limitation as to the employment of the other \$ 75 deputy save the discretion of the clerk himself. Mr. Atkinson seems to think that the district judge has some control over the employment of this deputy, but I do not find anything in the act upon which to base this conclusion.

I take it that the clause "Such amounts shall be payable only to the deputy performing such services," can have no reference to the three years that have passed when taken in connection with Section 9 of the act, but, although it is not clear from anything in the act what the word "Such services" may mean, it requires that for the future the amounts provided for deputies must be paid to the deputies and not to the clerk himself.

In view of some things in Mr. Atkinson's letter, I ought to add that in my opinion the deputies provided for up to a possible limit of \$ 2800 per year are not to be considered as restricted to any particular kind of work. That is to say, the deputy who may be employed when the fees turned into the treasury by the clerk, exclusive of those derived from the district court, shall exceed \$ 4000, is not limited to the performance of duties outside of those of the district court, nor is the other deputy who may be employed where the fees derived from the district court exceed \$ 2500, to be limited to work in the office of the district court. There is nothing in the act so to restrict these deputies and I believe that any and all of them may be called upon by the clerk to perform ANY work, whether in the county office or in the district court office or in the office of the probate court.

I return the letters of Mr. Atkinson and Mr. Ballard as requested.