

## Opinion No. 15-1462

March 6, 1915

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. Antonio Av. Rivera, Taos, N. M.

**As to the fee to be charged by county clerks for certificates of nonincumbrance, required by the Commissioner of Public Lands, as to state lands.**

### OPINION

{\*49} I have today received your letter of the 3rd inst. in which you say that the Commissioner of Public Lands has asked you to execute 24 certificates of non-incumbrance to some state lands located in Taos County, and that he states in his letter to you that I have ruled that you are entitled only to a fee of 25 cents for each certificate and 5 cents for each year for which search is made, and as he wants the certificate to run for four years, that makes 45 cents for each certificate.

You further say that such a certificate could not very well be made without a careful and thorough search of the records which you think would take about ten days for the whole 24 certificates, and that you have no assistant and you would have to neglect your other duties to make these searches and to certify them, and, therefore, you desire to know if it is a part of your official duty to make these searches in preference to the other work in your office.

These certificates are all as to lands which have been selected by the Commissioner of Public Lands under the donations made to the territory or state by congress. The lands are selected from the public domain and would not be approved at Washington if there ever had been any entry or filing upon them in the land office. This fact makes it absolutely certain that there could be no incumbrance on the lands as the title was in the United States until the selection made by our Commissioner of Lands had been approved by the department in Washington. There is really no good reason which can be given for requiring such certificates, but it is one of the requirements of the United States General Land Office at Washington and must, therefore, be complied with. In view of the impossibility of there being any incumbrance on any such lands. I believe that the county clerks in all counties have signed the certificates as a matter of course, knowing that they must be correct, and I see no reason why you cannot safely take the same course.

I think that you are in error in saying that the statute entitles the clerk to 50 cents for each certificate. If you will refer to Section {\*50} 1768 of the Compiled Laws of 1897, you will find that the probate clerk is allowed "for each certificate and seal twenty-five cents." There is no other statute fixing any different fee for the probate clerk, recorder or county clerk. You must have had in mind the provision in Section 1019 of the Compiled

Laws which gives to the clerk of the district court a fee of 50 cents for each certificate under seal, but that has no application to the fee which you can charge except when acting as clerk of the district court. As to the charge of five cents for each year for which search is made, that is fixed in Section 3958 of the Compiled Laws.