

Opinion No. 15-1503

April 23, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. A. G. Whittier, State Traveling Auditor, Estancia, New Mexico.

As to the deduction of eight per cent by county collectors from amounts collected by them and to be covered into the county salary fund.

OPINION

{*87} I have received your letter of yesterday asking me to advise you as to the meaning of Section 13 of the county salary bill which provides that "from all taxes and licenses of whatever character which have been collected in the several counties of the state since the qualification of the county officers elected at the general election held on November 7, 1911, and which are hereafter collected, eight per centum shall be deducted and covered into the aforesaid county salary fund." You say that there seems to be no question that from now on the assessor shall charge no fees and that the treasurer shall deduct eight per cent and cover it into the salary fund, and you ask whether the section is retroactive and if the treasurer shall deduct from all taxes received since January 1, 1912, at the rate of eight per cent, or does he deduct the eight per cent from the present time, leaving the deductions formerly made to stand?

Since the organization of the state government, under the decision of the supreme court, there could be no fees or commissions of any kind, and as a strict matter of law no deductions should have been made. As a practical matter, however, Mr. Earnest advised county treasurers to put aside eight per cent and to hold it as a salary fund so that counties could have money on hand to pay back salaries whenever they were fixed by the legislature. This ought to work well in the adjustment now being made with the different county officers. The deductions provided for in Section 13 are to be made from taxes and licenses heretofore collected since the qualification of county officers, as well as those hereafter to be collected, but if money has been so deducted under Mr. Earnest's permissive authority, of course it cannot be deducted a second time, but that money should be in the county salary fund and used for the purposes indicated in the county salary bill. If, as a matter of fact, the treasurer has deducted more than the eight per cent allowed by said Section 13 upon the taxes collected since statehood, the excess ought to be distributed like any other taxes to the different {*88} county funds. If he has deducted less, enough more should be deducted to make up the eight per cent, and while this may be a little difficult of adjustment, if the taxes have been distributed to the different county funds, yet I suppose it can be worked out so that every fund will contribute its portion of what may be necessary to bring the deduction up to eight per cent.

You also ask as to poll taxes, concerning which you say the collector received ten per cent, ninety per cent being turned in to the county treasury, and you ask whether the treasurer deducts eight per cent from the amount turned over to him, or from the total collected. He must make these deductions from the amounts of money received by him. If he were to deduct eight per cent from the total amount he would be left with ninety-two per cent for which he would have to account, although he had never received it, and this would be so absurd that the legislature could not possibly have intended it.