

## Opinion No. 16-1760

March 16, 1916

**BY:** H. S. CLANCY, Assistant Attorney General

**TO:** Mr. A. G. Whittier, State Traveling Auditor, Santa Fe, New Mexico.

**As to compensation of county treasurer and county clerk for work outside of their official duties.**

### OPINION

{\*331} I have before me your letter of the 10th instant in which you ask for the opinion of this office upon a question involving the performance {\*332} of work for a county by a county treasurer and a county clerk, such services being outside of the duties required of them in their official capacity.

In a particular instance cited by you it appears that the county treasurer is a practicing physician and that he has been employed by the county commissioners to make examination of persons said to be insane, for medical attention to prisoners in jail, making post mortem examinations of bodies, etc., for which he has been paid.

Sec. 1 of Art. X of the Constitution provides that no county officer shall receive to his own use any fees or emoluments other than the annual salary provided by law, which is interpreted by this office to mean that they shall receive no other compensation than the salary provided for the rendering of services by them in connection with the office to which they have been elected; but that such officer is not rendered legally incompetent to the discharge of duties which are clearly outside of the scope of his official duties, and, therefore, for such services the officer might have compensation in addition to his salary. In the present case it would appear that the county does not lose any money by employing its treasurer to perform certain duties as a doctor, such services rendered requiring payment to someone, and such duties being entirely without the scope of his official duties.

So far as the performance by the county clerk of services as a surveyor is concerned, the case is entirely different, as Sec. 1297 of the Codification of 1915 distinctly provides that all county surveying and engineering on roads or bridges shall be performed by the county surveyor. It would thus appear that the county commissioners are not authorized to employ and pay a county clerk for services which the surveyor is specifically enjoined by law to perform.