

## Opinion No. 16-1810

May 24, 1916

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

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

**As to additional compensation of county clerks who act as clerks of the district court.**

### OPINION

{\*375} I have your letter of yesterday calling attention to that portion of Section 2 of Chapter 12 of the Laws of 1915, providing for additional compensation to county clerks who act as clerks of the district court, which reads as follows:

"And, Provided, Further, until relieved by law, from the performance of the duties of clerks of District Courts, the county clerks of the several counties in the state shall respectively receive additional compensation as follows:" \* \* \*

As you say, this proviso distinctly declares that in all cases the county clerk, acting as clerk of the district court, shall receive the additional compensation specified and the matter would be perfectly clear if it were not for a clause immediately following the specification of the amounts to be paid the county clerks, which declares that such amounts shall be payable only to the deputy performing such services.

I agree with you that there is no doubt that in cases where the county clerks have employed a deputy to perform the duties of the district court, that deputy must receive the additional compensation provided by the statute, but you desire to know whether the county clerk can receive the additional compensation if he does the work himself and does not employ a deputy.

After careful consideration I have reached the conclusion that that sentence about the compensation being paid only to the deputy performing the service, must be considered as coming into operation only in those cases where the county clerk has employed a deputy to do the work of the district court, and that where he has not employed such a deputy, that sentence is not effective and he himself is entitled to receive the additional compensation in accordance with the positive statement set out in the first quotation hereinbefore made.