

## Opinion No. 17-2037

August 2, 1917

**BY:** C. A. HATCH, Assistant Attorney General

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

Weighmaster Fees a Proper Charge Against Sheriffs.

### OPINION

Replying to your favor of the 29th ultimo, wherein you ask whether the fees provided for in Sections 5819 to 5856 of the 1915 Codification are proper charges against the Sheriff, and as to whether or not the expenses of the Weighmaster constitute an expense to be allowed the Sheriff, we advise as follows:

1. With reference to whether or not the fees are a proper charge against the Sheriff, we refer to Section 1, Article X, of the Constitution, which provides that no county officer shall receive to his own use any fees or emoluments other than the annual salary provided by law, and the fees earned by any officer shall be by him collected and paid into the treasury of the county. Chapter 12 of the 1915 Session Laws fixes the annual salary of the Sheriff. Section 6 of the same act also provides that no county officer shall receive any other compensation than provided by said act. No provision is made in this act for any extra compensation to the Sheriff by virtue of his acting as Weighmaster. In the case of *Mulcrevy v. San Francisco*, 58 L. Ed. 425, the Supreme Court of the United States held that where an officer's compensation was a fixed salary, such salary to be in full for all services rendered, and that all fees or emoluments coming into his hands by virtue of his office should go into the treasury of the State or county, such officer could not retain to his own use any fees coming into his hands by virtue of the office, and all such fees should go into the treasury. In the case of *Dysart v. Graham*, 5 Ariz. 123, 48 Pac. 213, the court held that where the law fixes the compensation for a treasurer, such compensation to be in full for his services as treasurer, and another law makes the treasurer ex-officio tax collector, the treasurer can receive no other compensation for his services as tax collector, and his compensation fixed for his services as treasurer is in full and he is not entitled to receive any other compensation by virtue of his acting as tax collector. To the same effect are the cases of *Foote v. Lake County*, 69 N. E. 47; *Parker v. Richland County*, 73 N. E. 451; *People v. Bowman*, 97 N. E. 304.

In view of these decisions, also the Constitutional provision mentioned, Chapter 12 of the 1915 Session Laws, and also the decisions of our own Supreme Court, holding that a county officer is entitled only to the salary provided by the legislature (*Delgado v. Romero*, 17 N.M. 81), and in view of the fact that the law creating the office of Weighmaster makes the duties of this office a part of the duties of the Sheriff and constitutes him ex-officio public Weighmaster, we advise that the fees provided for are

proper charges against the Sheriff, that he cannot retain them to his own use, but that they should be paid into the treasury.

2. As to your second inquiry, as to whether or not the expenses of the Weighmaster are an expense to be allowed to the Sheriff, will say that Section 5822 provides that the public Weighmaster shall keep his office at the county seat of the county, and the county shall provide record books and blanks, and actual expenses incurred in connection with his office shall be paid out of the county current expense fund. Under this provision of the Statute, we believe that the actual expenses of the Sheriff in connection with his duties as public Weighmaster are proper charges against the county, when supported by the verified, itemized statements of the Weighmaster.