

Opinion No. 17-2054

September 25, 1917

BY: C. A. HATCH, Assistant Attorney General

TO: Mr. C. A. Rector, Sheriff Chaves County, Roswell, New Mexico.

Sheriffs Not Responsible for Fees Collected by Deputy Weighmasters.

OPINION

In answer to your oral request relative to whether or not the fees provided for in Section 5831, of the 1915 Codification, are proper charges against the sheriff, when the deputy collecting the fees is not a salaried deputy sheriff, and when the sheriff himself does not receive any part of such fees, and also as to the proper construction of our Opinion to the Hon. A. G. Whittier, Traveling Auditor, under the date of August 2nd, we advise as follows:

In the Opinion to Mr. Whittier, we expressly held these fees were proper charges against a sheriff. It was our intention in that Opinion to only hold such fees to be proper charges against the sheriff when the sheriff himself collected them. We did not refer to the Deputy Weighmasters provided for in the act, nor did we mean to hold at that time, such fees were or were not, proper charges when collected by the Deputy Weighmaster. In reading the letter to Mr. Whittier, we readily see our meaning therein could be very easily misconstrued. In this letter, as in the one to Mr. Whittier, we expressly refrain from passing upon the right of a Deputy Weighmaster to collect the fees provided for in Section 5831. We only pass upon the question as to the **liability** of the **sheriff**, and whether such fees constitute charges against him when they are collected by the **Deputy Weighmaster**, and the sheriff has received no part of them.

We find the Deputy Weighmaster provided for in Section 5821 of the Codification and the succeeding sections, are placed on an equal footing with the sheriff, who is ex-officio Public Weighmaster. The following language used in Section 5821 shows they are on equal footing, have equal authority, and are subject to the same penalties:

"The Public Weighmaster shall appoint one or more Deputy Weighmasters for his county, who may be regular Deputy Sheriffs, which deputies shall have all the powers conferred upon the Public Weighmaster, and shall be liable to all the penalties to the same extent as the Public Weighmaster for violation of the provisions of this chapter."

By the same section the deputies are required to keep a record of their transactions for public inspection. Before entering upon the discharge of their duties, they must take and subscribe to an oath for the faithful performance of their duties. In the different sections of the Article, where ever the term "Public Weighmaster" is used, it is almost invariably followed by the words "or the Deputy Weighmaster," regardless of whether duties are

being imposed or penalties provided. That it was not the intention of the Legislature for the sheriff, as Public Weighmaster, to receive or have any charge or control over the fees collected, is evidenced by Section 5831, making the provision for fees. This Section provides such fees may be demanded and received by the Deputy Weighmaster. There is no provision made for the sheriff to either demand or receive such or any other fees for his services as Weighmaster. From these provisions we take it, it was not the intention of the Legislature for the sheriff to exercise any control or dominion over the fees collected by the deputies, or provided for by the Act. It was evidently the intent of the Legislators to place the sheriff, as Public Weighmaster, and the Deputy Weighmaster on equal footing, making each responsible, but that their responsibilities be separate and several.

This being our conclusion, we do not think the sheriff should be held responsible for fees coming into the hands of another officer (Deputy Weighmaster), who has equal authority, and over which fees the sheriff as Public Weighmaster, has no control or dominion.

We, therefore, advise where the fees provided for in Section 5831, are collected by a proper deputy and the sheriff has received no part of the, they are not proper charges against the sheriff.

We are sending a copy of this letter to Mr. Whittier.