

Opinion No. 20-2571

May 7, 1920

BY: H. S. BOWMAN, Assistant Attorney General

TO: Hon. H. B. Holt, Las Cruces, N.M.

County Commissioners May Not Employ Additional Clerical Assistance For County Treasurer.

OPINION

We are in receipt of your letter of the 4th requesting an opinion from this office regarding the authority of the County Treasurer and Collector to employ additional clerical assistance in order to assist in issuing the tax sale certificates for the years 1915 and 1917.

In our opinion there is not only no authority for the payment by the Board of County Commissioners of a salary to such an assistant appointed by the Treasurer and Collector, but there is direct judicial prohibition against such a course. In the case of Delgado vs. Romero, 17 N.M. 81; 124 Pac. 649; Ann. Cases 1914 C. 1114, the Supreme Court held that the compensation of county officers is dependent upon the enactment by the legislature of a salary law. In the case of State vs. Montoya, 20 N.M. 104; 146 Pac. 956, our Supreme Court held that a deputy assessor appointed by the county assessor could not be paid a salary or wages out of the public funds by the Board of County Commissioners in the absence of a statute fixing the same, and authorizing such payment.

There are other objections to the payment of an assistant to the Treasurer in the provision of Section 27, Art. IV of the Constitution, which provides, "nor shall the compensation of any officer be increased or diminished during his term of office, except as otherwise provided in this Constitution." It has been held that the payment of a clerk or an assistant in the office, in addition to those provided by law, is a violation of such a provision of the Constitution.

Dougherty vs. Austin. 24 Calif. 601; 25 Pac. 834; 29 Pac. 1092; 16 L. R. A. 161.

There is another statutory provision which we believe is conclusive against the action suggested by the Board of County Commissioners, to-wit: Section 6, Chapter 12, Laws 1915, which reads as follows:

"No county officer shall accept or receive to his own use or for or on account of any deputy or deputies, clerk or clerks, appointed by him or employed in his office, or for or on account of expenses incurred by him or by any such deputy or deputies, clerk or

clerks, or for or on account of his office, any salary, compensation, allowance, fees or emoluments in any form whatsoever other than as by this act allowed."

In our opinion this provision of the act known as the salary law, is a direct prohibition against the employment of any assistants or the payment of any salaries other than those provided for in that act.

It is, therefore, our opinion that there is no authority under the law by which the county treasurer or collector is authorized to employ additional help for his office for the purposes mentioned in your letter.