

Opinion No. 20-2574

May 10, 1920

BY: N. D. MEYER, Assistant Attorney General

TO: Mr. P. A. Hughes, Clerk, Deming, New Mexico.

Fees of County Clerk for Issuing Marriage Licenses.

OPINION

We have your letter of the 6th instant in which you state that your charge for issuing marriage licenses, where the application was made before you, has heretofore been \$ 1.50, and that where you issued a license upon an application sent in by a justice of the peace you only charged the fee of \$ 1.00, and ask whether or not you are charging a proper fee under the law.

Under Section 3440 of the Code the fee to be charged for issuing a marriage license, recording and indexing it and recording and indexing the certificate of marriage, is \$ 1.00. I do not believe that this section is broad enough to cover any charges for services performed in swearing the applicant at the time he makes application for a marriage license, and that a charge for this service, where such is provided for and allowed by law, in addition to the fee of \$ 1.00 hereinabove mentioned, would be proper.

There is no provision made by law allowing any charge to be made in assisting an applicant in preparing his application for marriage, or for the blanks used, but there is provision allowing the county clerk a fee for administering oaths and taking acknowledgments. Under Section 1240 the county clerk is allowed a fee of three cents for administering each oath and a fee of twenty-five cents for taking every acknowledgment to a deed or other writing. In the case of an application for a marriage license, both parties sign the application and must be sworn.

It remains to be determined whether the swearing of the parties making the application as to the truth of the matters stated therein, is the taking of an acknowledgment or the administering of an oath. 1 Corpus Juris, at Section 1, page 745, defines an acknowledgment to be a "formal declaration for admission before an authorized court or public officer by a person who has executed an instrument, and that such instrument is his act and deed." In 29 Cyc., at page 1297, an oath is defined as being an avowal before God in regard to the truth of the words of him who swears.

In view of what these authorities state an acknowledgment and an oath are, I am compelled to conclude that the act that a county clerk performs in swearing the applicants for a marriage license is the administering of an oath and not the taking of an acknowledgment, so it would follow that all that the clerk is entitled to is a fee of six

cents in connection with any services performed in the preparation of an application for a marriage license.