

Opinion No. [29-19]

April 10, 1929

BY: J. A. MILLER, Assistant Attorney General

TO: George H. Barrows, County Clerk, Clovis, New Mexico.

COUNTY OFFICERS -- Salaries -- Special deputies. Chap. 99, Laws 1929. § 33-3202, Code 1929.

OPINION

Reference is made to your letter of the 3rd inst. in which you ask an opinion from this office as to the effect of a portion of House Bill No. 74, carrying the emergency clause and approved Mar. 11, 1929. You desire to know whether or not the Budget Law has been superceded by this Act, the portion to which you particularly direct attention being as follows:

"Provided that whenever during any calendar year the fees earned and turned into the County Treasurer by the County Clerk, exclusive of those derived from the District Court, as shown by the certificate of the County Treasurer, shall exceed in Counties of the First Class the sum of Thirty-five Hundred Dollars; in Counties of the Second Class the sum of Three Thousand Dollars; in Counties of the Third Class the sum of Two Thousand Seven Hundred and Fifty Dollars; in Counties of the Fourth Class the sum of Two Thousand Five Hundred Dollars, and in Counties of the Fifth Class the sum of Two Thousand Dollars, an additional deputy or deputies may be employed in such clerk's office in sufficient number to take care of any emergency, upon the authority of the County Board of Commissioners at a salary to be fixed by the Board of County Commissioners, but in no case shall the salary exceed \$ 100.00 per month, salaries for such additional Fee Deputies to be paid out of the fees collected and turned over to the County Treasurer but no such deputy or deputies shall be employed unless the County Clerk devotes himself personally to the duties of his office during usual business hours."

The pertinent parts of the Budget Laws as at present in force are to be found in Section 4 of Chapter 188, Laws of 1921, as amended by Section 3, Chapter 138, Laws of 1925, and which it is not necessary that I quote in full here, inasmuch as you will have easy access thereto.

Since House Bill No. 74 of the last Legislature contains no specific reference to the Budget Bill and contains no provision relative to repeal, nothing will be repealed thereby except by implication and a finding that this Act conflicts with a former Act to such an extent that it is not possible to give full force and effect to both. However, repeal by implication is not favored as a matter of law and when, as in this case, the later Act is silent on the subject of repeal, it becomes our duty to give effect to both acts if that is possible.

I find nothing in the paragraph of House Bill No. 74 which is above quoted or in the entire bill in conflict with the Budget Law above referred to. The fact that the Legislature has declared that the public peace, health and safety of the inhabitants of the State of New Mexico require that special Fee Deputies, as provided in the Act, be employed at the earliest possible time, thereby making the Act effective upon its passage and approval, does not do away with the necessity of having county expenditures set up and approved as required in the Budget Law. Nor does the wording of the proviso to which our attention is particularly directed fit in with the immediate employment of Fee Deputies, as the permission to employ such deputies is dependent upon the fees earned and turned in to the County Treasurer by the County Clerk during a calendar year. A "calendar year", in legal parlance, is generally held to be a year commencing with January 1 and ending December 31. It may well be that in any county of any one of the five classes, the Commissioners will be unable to determine until near the close of December whether or not the fees earned and turned in to the County Treasurer by the County Clerk, exclusive of those derived from the District Court, shall or shall not warrant employment of the special Fee Deputy mentioned in this proviso. On the other hand, it may be that the receipts of fees will be sufficient upon which to determine the question earlier in the year. I fear that a situation may arise causing embarrassment to Boards of County Commissioners since the Budget Law requires that budget estimates for each county be approved on or before September 1 of each year.

If, and in order to give effect to the emergency clause, the question of employing or not employing additional Fee Deputies is determined by the fees earned and turned in to the Treasurer's Office by the Clerk in the year 1928, Commissioners may find themselves authorized to employ an additional deputy or to employ deputies, but without provision being made for paying such deputies this year, and it could happen that the receipts for 1929 would fall below the requisite amount and thereby such deputy not be authorized for the year 1930.

The fact that the amendment quoted from House Bill No. 74 contains the following language: "salaries for such additional Fee Deputies to be paid out of the fees collected and turned over to the County Treasurer", does not seem of much effect, since it has been the law heretofore as provided in Section 12 of Chapter 12 of the Laws of 1915, as follows:

"Sec. 12. The treasurers of the several counties in the state shall create a fund to be known and designated as the County Salary Fund, to which shall be credited all monies received from the sources mentioned in the preceding section."

The sources mentioned in the preceding section were the collections of fees of this nature.

House Bill No. 74 also makes provision for certain increases in salaries and deputy hire in counties of the first and third classes, which of course, were not contemplated at the time the budgets were being made up for the year 1929.

Of course, you are aware of the following language quoted from Section 3 of Chapter 138 of the Laws of 1925:

"* * * When such approved and certified estimate shall have been received by the county clerks of each county in the state, such approved and certified estimate shall be presented to the boards of county commissioners and duly recorded in the minutes of the commissioners' proceedings, and when so received and recorded, as aforesaid, said approved and certified budgets shall be binding upon all county officials, and the several boards of county commissioners, and all other officials having the right to allow any pay claims from the revenue to be so provided shall not allow nor approve claims in excess thereof, nor shall the county treasurers pay any county or other warrants in excess thereof * * *",

after which liabilities are provided for a violation.

It is our opinion that Fee Deputies who may be employed under authority of this Act cannot legally be paid for services until after the making up of the county budget, in which provision shall be made for such payment.