

**Opinion No. [29-17]**

December 9, 1929

**BY:** M. A. OTERO, JR., Attorney General

**TO:** Mrs. Thelma T. Lusk, County Clerk, Carlsbad, New Mexico.

COUNTY OFFICERS -- Probate Judge may perform marriage ceremony and accept gift.

**OPINION**

I am just in receipt of your favor of the 7th inst. asking me whether or not the probate judge has the authority to perform marriage ceremonies, and if so whether or not he may retain the fees derived therefrom.

In reply thereto will say that section 3426 of the 1915 Code gives the power to solemnize marriages to celrgymen and to any "Civil Magistrate." Anderson's Law Dictionary defines "magistrate" as "A governor, ruler, officer." Any magistrate not military would be a civil magistrate, so any civil officer would be a civil magistrate. A probate judge is a county officer and hence a civil magistrate and authorized to solemnize marriages.

There is no provision of law for the collection of any fees for such services by the probate judges and if fees are collected he would be guilty of collecting illegal fees and could be prosecuted therefor. However, if the parties choose voluntarily to give him a gift, in any sum to be determined by them, then he could keep such gift as his own and would not be required to turn it in to the county, but such officer should be very careful not to name the amount or in any way compel the payment of the same.

Trusting that the foregoing gives you the information you desire and with very kindest personal regards to both you and Aud, and wishing you all a very Merry Christmas, I am,