

Opinion No. [30-12]

May 9, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Judge C. R. Brice, Attorney at Law, Salmon Building, Santa Fe, New Mexico.

COUNTY OFFICERS -- Extra deputy for county clerk, ch. 99, L'29, 33-3202, Code 1929.

OPINION

I have your favor of the 3rd inst. regarding the legality of the employment of an extra deputy by the very excellent County Clerk of Chaves County, Miss Grace Massie, at a salary of \$ 150.00 per month, for the calendar year 1929, together with certain correspondence which apparently passed between Miss Massie and the State Comptroller relative to this proposition.

From your letter it would appear that Miss Massie employed this extra deputy under the provisions of chapter 59 of the Laws of 1925, or more specifically, under the provisions of section 33-4311 of the Code of 1929, -- Chaves County having apparently collected the sum of \$ 8,256.80 in fees for the calendar year 1929. Furthermore, it appears that the State Comptroller has disallowed this payment on the ground that the same is not in the budget for the first part of the year. You asked me to consider this entire proposition and render you an opinion thereon.

The condition of our statutes is such that confusion may easily arise in an effort to determine just what the legislature has provided in this matter.

Chapter 12 of Session Laws of 1915 is an act relating to county officers, classifies counties as of that time and fixes salaries of such officers according to classification. In section 2 of that act following the provisions in the several classes of counties for salaries there is found this language.

"Provided, whenever during any calendar year the fees earned and turned into the county treasury 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 \$ 4,000 . . . a deputy or additional deputy may be employed upon authority of the board of county commissioners at a salary to be fixed by it, which salary shall in no event exceed \$ 75.00 per month, but no such deputy or additional deputy shall be employed unless the county clerk devotes himself to the duties of his office during usual business hours."

In 1925 the legislature passed an act as chapter 59 authorizing the employment of additional help for county clerks in counties of the first class. This does not appear as an

amendment to chapter 12 of 1915 but rather as additional legislation. Sections 1 and 2 of that chapter are as follows:

"Sec. 1. That whenever during the preceding calendar year the fees earned and turned into the County Treasury 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 Seventy-five Hundred Dollars (\$ 7500), a deputy or additional deputies or clerks may be employed upon authority of the Board of County Commissioners at a salary to be fixed by it, which salary shall in no event exceed One Hundred and Fifty Dollars (\$ 150) per month, but no such deputy or additional deputies or clerks shall be employed unless the County Clerk devotes himself or herself to the duties of his or her office during usual business hours."

"Sec. 2. That this Act shall not be construed as repealing the present existing law except in so far as the same prohibits the action herein made lawful, and all counties of the first class wherein the fees for the preceding calendar year have not equaled the sum of Seventy-five Hundred Dollars (\$ 7500) as herein mentioned, and all counties of the second, third, fourth and fifth class shall not be affected thereby."

It is well to note in this connection that the provisions of this chapter as to additional deputies and their salaries apply only in counties of the First Class and then only to counties within which the fees collected during the previous year exceeded the sum of \$ 7,500.00. It is specifically provided that "all counties of the first class wherein the fees for the preceding calendar year have not equaled the sum of \$ 7,500.00 as herein mentioned and all counties of the second, third, fourth and fifth class shall not be affected hereby."

The legislature, by chapter 69, Laws of 1927, amended section 2 of chapter 12 of the Laws of 1915, supra; the pertinent parts of such chapter 69 being as follows: under the caption, Counties of the First Class, County Clerk, annual salaries are provided for as follows: County Clerk, \$ 3,000 and \$ 1,500 additional for a deputy or deputies, **Provided, however, that nothing in this act shall be construed as repealing or amending chapter 59 of the Laws of 1925.**

"Provided, whenever during any calendar year the fees earned and turned into the county treasury 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 \$,000 . . . an additional deputy may be employed upon authority of the board of county commissioners at a salary to be fixed by it, which salary shall in no event exceed \$ 75.00 per month . . ."

In 1929 the legislature, by chapter 99, amended section 1 of chapter 69 of the Laws of 1927, parts of which have just been quoted and which chapter we observe was in itself an amendment of section 2 of chapter 12 of the Laws of 1915. From chapter 99, Laws of 1929, under counties of the first class we read:

"County Clerk, \$ 3,000, and \$ 1,800.00 additional for a deputy or deputies. **Provided, however, that nothing in this act shall be construed as repealing or amending chapter 59 of the Laws of 1925.**" We also find in the act this language:

"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 clerks' offices 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 proviso appearing both in chapter 69 of the Laws of 1927 and in chapter 99 of the Laws of 1929, that nothing in either act shall be construed as repealing or amending chapter 59 of the Laws of 1925, requires special attention. In each instance it is tucked away in a place far removed from the general provisions relative to the employment of additional deputies, but in each of these chapters there is this specific declaration of the legislature that it is not intended that chapter 59 of the Laws of 1925 be repealed or amended.

It is our duty, of course, if possible, to give effect to all the language of a statute. In order to do this it appears that the statutes as they now stand would be fully covered by Chapter 99 of the Laws of 1929 if the proviso relative to Laws of 1925 were written into chapter 99 in connection with the proviso above quoted, that is, the one which provides for additional deputies in clerks' offices on the basis of the fee collections of the preceding year, which proviso, we note, applies to counties of all classes and so far as it affects counties of the first class, to counties of that class in which the fee collected and turned in the preceding year exceed the sum of \$ 3,500.

As we have already observed, Chapter 59 of the Laws of 1925 applied only to those counties of the first class in which the collections of the preceding year exceeded the sum of \$ 7,500. We now have a provision in Chapter 99, Laws of 1929, for counties of the first class in which the fees have not reached the sum of \$ 7,500 and as well for counties of all other classes. It would seem to have been the intent of the legislature that in counties of the first class where fees collected have exceeded the sum of \$ 3,500.00 an additional deputy or deputies may be employed with the consent of the County Commissioners but at salaries not exceeding \$ 100.00 per month and when in such counties of the first class the fee collections reach the sum of \$ 7,500, the Board of

County Commissioners may authorize the employment of deputies at salaries not exceeding \$ 150.00 per month, as provided in Chapter 59 of the Laws of 1925.

As to the application of the budget law, this statute being of later enactment than the budget law containing provisions which cannot be harmonized with the requirements of that act, passed to meet emergencies which might arise and providing for the payment of salaries out of fees collected, thereby not entering into the consideration of tax levies, we are of the opinion that it is intended to operate independent of the budget law and that payments of deputies should be approved upon finding that the facts authorized the employment and payment of such deputies are found to exist.

I am sending a copy of this letter to the State Comptroller for his information in the premises.