

## Opinion No. 31-183

June 6, 1931

**BY:** E. K. Neumann, Attorney General

**TO:** Mr. J. M. Lujan, State Comptroller, Santa Fe, New Mexico.

{\*78} This is supplementary to our letter of June 4, 1931, concerning the disposition of fees collected by deputy weighmasters with special reference to fees collected by regular deputy sheriffs acting as deputy weighmasters.

Section 153-103 of the 1929 Code provides, that sheriffs shall be exofficio public weighmasters for their respective counties. This simply means, that by virtue of their offices, sheriffs are also public weighmasters; in other words, the duty of acting as public weighmaster is an additional duty of the office of sheriff.

Section 33-4415, provides as follows:

"33-4415. POWERS OF THE DEPUTY SHERIFF. The said deputies are hereby authorized to discharge all the duties which belong to the office of sheriff, that may be placed under their charge by their principals, with the same effect as though they were executed by the respective sheriffs."

It would appear from the above cited statutes, that it is the official duty of deputy sheriffs as such, to perform the duties of public weighmasters, when such duties are placed {\*79} under their charge by their principals.

It would follow, in accordance with Section 33-3206 of the 1929 Compilation, that such deputy sheriffs would not be entitled to receive any extra compensation over and above their regular salary for performing such duties.

In determining whether or not deputy sheriffs acting as deputy weighmasters are entitled to receive the fees allowed by law for their own use, the principal question to be determined is whether such duties are required of them on account of their holding the office of deputy sheriff. If this question be answered in the affirmative, they would not be entitled to such, if it be answered in the negative, they would be entitled to the fees, in my opinion.

In view of the statutes above cited, I am of the opinion that deputy sheriffs, in their official capacity as such, are required to perform the duties of public weighmasters when so designated by the sheriffs, and that they are not to receive for their own use any fees or other extra compensation for their services.

By Quincy D. Adams,

Asst. Attorney General