

## Opinion No. 42-4199

December 8, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{\*288} We are in receipt of your letter {\*289} of December 2, 1942, in which you ask an opinion of this office as to whether Section 33-4308, New Mexico Statutes Annotated, 1929 Compilation, is in conflict with Article X of the New Mexico Constitution. This section was amended by Chapter 132, Laws of 1941, in particulars not pertinent hereto.

Under the terms of this section, the various county clerks are required to bind into volumes all newspapers printed within their respective counties and provides a fee of \$ 10.00 to be paid to such clerks for each volume so bound. This statute was originally enacted in 1889 as a part of the old fee system by which county officers were paid, and since it provides for the payment of a fee to the county clerks other than their salaries, it is clearly in conflict with Article X, Section 1, of the New Mexico Constitution, which provides in part as follows:

"And no county officer shall receive to his own use any fees or emoluments other than the annual salary provided by law, and all fees earned by any officer shall be by him collected and paid into the treasury of the county."

However, the fact that this section is in conflict with the Constitution, insofar as it provides for the payment of a fee, does not necessarily render the whole statute void since "a statute may be in part constitutional and in part unconstitutional \* \* \* even though the constitutional and unconstitutional parts are in the same section of the act". 59 C.J. 639.

The test, as laid down by the author in 59 C.J. 642, is "that if, when the invalid part is stricken out, that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent wholly independent of that which was rejected, it must be sustained to that extent."

It appears to me that the legislative intent is fully carried out with a clause providing for the \$ 10.00 fee deleted, since at the time the act was originally enacted it was a part of the old system of compensation of county clerks, for which system the salary system was substituted. To my mind, the fact that this clause as to fees was carried forward in Chapter 132, Laws of 1941, does not detract from this interpretation since it is apparent that in re-enacting this part of the act, this provision was included by inadvertence.

It is therefore my opinion that Chapter 132, Laws of 1941, is unconstitutional insofar as it provides for the \$ 10.00 fee to be paid to county clerks, but is valid and in full force and effect in all other particulars.

By ROBERT W. WARD,

Asst. Atty. General