

**Opinion No. 43-4254**

March 18, 1943

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

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

I have your letter of March 1, 1943, wherein you request an official opinion concerning whether or not Clerks of the District Courts may retain fees collected for the execution of a passport application.

It is noted that Section 16-349 of the New Mexico 1941 Compilation provides for the disposition of all fees and commissions earned and collected by Clerks of District Courts, except fees collected under Section 16-347 of the New Mexico 1941 Compilation, which section concerns the specific fees upon which an opinion is now requested.

Article 10, Section 1, Constitution of New Mexico provides:

"\* \* \* 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."

Article 20, Section 9, of the Constitution of New Mexico provides:

"No officer of the state who receives a salary, shall accept or receive to his own use any compensation, fees, allowance, or emoluments for or on account of his office, in any form whatever, except the salary provided by law."

In view of the above two provisions of our Constitution it is immaterial whether the Clerks of the District Courts are State or County officers, and in either event they may not receive any emoluments for or on account of his office in any form whatever except the salary provided by law.

In view of the above it is my opinion that such fees should be remitted to the proper County Treasurer.

By HARRY L. BIGBEE,

Asst. Atty. General