

Opinion No. 43-4267

April 14, 1943

BY: EDWARD P. CHASE, Attorney General

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

We have your letter of April 12, 1943, with reference to the payment of additional salary to Deputy County Clerks. You specifically ask whether or not a County Clerk may raise the salary of his or her Deputy when the said salary is stipulated in the budget at a certain figure when there is sufficient cash available from fees to permit the raise.

It is noted that Section 15-4103 of the New Mexico 1941 Compilation specifies the salary that shall be paid to a Deputy County Clerk according to the various counties of certain classes. It is assumed that under the fact situation you have in mind that the salary specified in these sections is at present being paid and is included in the budget at this figure.

This, in effect, involves three distinct questions as follows:

1. Does a County Clerk under any circumstances have the power to set salaries of a Deputy in excess of that provided by statute.
2. If he has such power could he pay salaries in addition to those provided in the budget for such County?
3. Whether it is possible in any event to pay any state or county employee salaries higher than is provided in the pertinent statute?

As to the first question I know of no provision of our law which directly or indirectly appears to give the County Clerks power to set the salaries of their Deputies irrespective of a direct statute as is herein involved.

I am unable to see how it could be possible under our present statutes to pay salaries to an officer in excess of the amount that is included in the budget of such county.

This office ruled in Opinion No. 1250-A on December 21, 1935, in regard to paying a salary in addition to the salary provided in the statute as follows:

"* * * Due to the further fact that the statute, as above stated, has fixed the salary of the Chief Tax Commissioner at \$ 3600.00 per year, it is my belief that no additional amount by way of salary could be authorized legally by the State Board of Finance to be paid to Mr. Beall."

Irrespective of any other questions indirectly raised by this inquiry it is my firm conviction that since the statutes provide a definite salary to be paid to Deputies or at least a definite limitation as to the amount of such salaries, that salaries in addition to those provided by law cannot be legally paid.

In view of the current conditions we realize that it may be impossible or difficult to obtain competent help at the figures provided by the statute as apparently contended by the County Clerk of Curry County. If this is true, as we have no reason to doubt, we can only point out that the Legislature of this State was recently in session and did not see fit to change this statute or Sections 15-4104 or 15-4105 of the New Mexico 1941 Compilation. Therefore, in view of the foregoing it is my opinion that no additional salary above what is specified in the statutes may in any event be paid to a Deputy County Clerk in payment for the duties of such Clerk.

By HARRY L. BIGBEE,

Asst. Atty. General