

**Opinion No. 43-4366**

August 16, 1943

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

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

I have your letter of July 29, 1943 requesting an official opinion concerning whether or not the Clerks of the various District Courts may retain fees received in connection with naturalization matters.

Section 16-347 of the New Mexico 1941 Compilation provides:

"Clerks of district courts shall receive and collect such fees as are required by the federal government on account of naturalization matters, copies thereof, or applications for passports, and shall not be required to account for same other than to the federal government."

At this time I wish to call your attention to the fact that this office has previously held that such part of the above quoted section as pertains to passport fees is unconstitutional in opinion number 4254 dated March 18, 1943.

However, in connection with naturalization matters a specific federal statute known as the naturalization act provides that the various District Court Clerks of the various judicial districts shall also be Clerks of the Federal Naturalization Court. This act specifically provides for the disposition of the fees received by the Clerks of the Federal Naturalization Courts. Therefore, in view of this statute the Clerks of the District Courts while acting as Clerks of a Federal Court are not acting in their capacity as Clerks of the State Court and, therefore, since a distinct federal employment is involved, which employment is not incompatible with the state employment, the federal statute concerning the disposition of the fees governs.

Hoping that the above fully answers your questions, I remain

By HARRY L. BIGBEE,

Assistant Attorney General