

Opinion No. 43-4352

August 3, 1943

BY: EDWARD P. CHASE, Attorney General

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

In your letter dated July 29, 1943, you refer to marriage ceremonies performed by Probate Judges under the provisions of Section 65-102 of the New Mexico 1941 Compilation, and inquire whether a fee that is being accepted can be kept by the Probate Judge under the guise of its being a voluntary gift.

It is true that under the Constitution, County Officials are not entitled to retain any fees or other emoluments arising out of their office other than their salary. However, this office has ruled in various opinions dating back as far as the 1917-1918 Biennial Report, that the Probate Judge may accept and keep a voluntary gift for the service of performing a marriage ceremony, although he may not charge a fee for the same.

If any fixed or stated amount is charged by the Probate Judge for this service, that would constitute a fee which would have to be turned in as other fees collected by the official, but if the service is performed gratuitously, and the persons being married are informed that there is no charge, and thereafter a gift is given to the Probate Judge, such a gift would not have to be reported and turned in to the County Treasurer. The distinction probably turns on the question of whether a fixed or stated charge is made.

By C. C. McCULLOH

First Asst. Atty. Gen.