

Opinion No. 46-4868

March 4, 1946

BY: C. C. McCULLOH, Attorney General

TO: E. T. Hensley, Jr. District Attorney Portales, New Mexico

{*198} I have your letter of February 21, 1946, wherein you request an opinion concerning the interpretation of a portion of Chapter 119, Section 1, Laws of 1945, the same being Section 15-4103 of the 1945 Supplement to the 1941 Compilation, which provision, insofar as is material to your inquiry, provides as follows:

"Provided, that whenever during any calendar year the fees earned and turned in to the county treasurer by the county clerk, exclusive of those derived from the district court as shown by the certificate of the county treasurer, shall exceed * * * an additional deputy or deputies may be employed in such clerk's office in sufficient number to take care of any emergency, upon the authority of the county board of commissioners, but in no case shall the salary exceed \$ 100.00 per month, * * *."

You state that the county clerk of Quay county has reported to you that the fees in her office, exclusive of district court fees, for the first seven months of this fiscal year exceed the amount required in the above section for a first-class county. You further state that the county clerk states that she has been unable with one deputy to take care of the increased volume of work. In view of this situation, you request an opinion of this office concerning whether the board of county commissioners may authorize the employment of an additional deputy on the basis of earned fees for a fractional part of a calendar year.

Since the statute provides that **whenever**, during any **calendar year**, the fees of such office exceed a said amount, if this amount is met, at any time, the board of county commissioners may authorize the additional deputy when such facts are certified to by the county treasurer.

Your letter refers to the amount of fees, exclusive of district court fees, earned for the first seven months of this fiscal year. Since the statute refers to a calendar year, this figure is immaterial except insofar as it might indicate what the fees were for the last calendar year. If the fees for the last calendar year exceeded \$ 3500.00, which would clearly seem to be the case since six of the seven months of this fiscal year which you refer to were in the last calendar year, we will assume that the amount of fees for the last calendar year exceeded \$ 3500.00. This, of course, will have to be verified by a certificate of the county treasurer. If such facts, however, are made to appear, the county commissioners {*199} may, upon all parties complying with the above provisions of the statute, authorize the employment of an additional deputy at a salary not exceeding \$ 100.00 per month.

By HARRY L. BIGBEE,

Asst. Atty. General