

Naturalization, Fees For.

Clerks of the District Courts are entitled to retain for their own use, one-half of the fees by them collected under the National Naturalization Act, approved June 29, 1906, up to the sum of three thousand dollars.

Helena, Montana, October 9th, 1906.

Hon. T. E. Collins, State Examiner, Helena, Montana.

Dear Sir:—I am in receipt of a letter addressed to you by H. C. Pound, Clerk of the District Court of Sweet Grass County, Montana, bearing date October 2, 1906, with reference to the question of the disposition of fees collected by clerks of the courts under the new naturalization act of June 29th, 1906, by you referred to this office for official opinion.

After careful consideration and study of the United States Statute upon this subject. (Act of June 29, 1906) I am of opinion that the clerk of each and every state district court in Montana is entitled to retain for his own benefit, one half of the total fees by him collected under said law until his proportion thereof shall amount to the full sum of three thousand dollars, and that, thereafter, all such fees must be by him fully accounted for and paid over to the Bureau of Immigration and Naturalization.

This construction of the law is borne out by the fact that, the clerk is by Sec. 13 of said Act expressly authorized "to retain one half of the fees collected by him," and further, the duties thus imposed upon the clerk are new and independent, and are conferred by the United States rather than a state statute.

The clerk is required to make and keep full and strict account of all fees by him collected and to report the same quarterly to the Bureau of Immigration and Naturalization, and these are duties other than those devolving upon him by virtue of the law creating his office and prescribing his duties. The clerk is allowed one-half of this fee by the United States Statute in order that he may be encouraged and compensated for the performance of this additional work and so that a uniform co-operation may be had in the enforcement of the United States Statute. Moreover, it is expressly provided in the law that the clerk shall pay for all necessary additional assistance required from his share of the fees so collected, and further, that in case the fees collected by any one clerk in one year shall exceed the sum of six thousand dollars, the Secretary of the Bureau of Commerce and Labor is authorized to allow such clerk from the money which the United States shall receive, additional compensation for the employment of necessary clerical assistance but for not other purpose, when, in the judgment of said secretary, the business of such clerk warrants such allowance.

It is true that Section 4613 of the Political Code as amended by Senate Bill 21, Laws of 1899, p. 50, provides that a fee of two dollars and a half shall be collected from every person to whom a final certificate of naturalization is issued, and that no other fee shall be charged for naturalization papers or for the recording thereof, which fee was heretofore collected by authority of this law, and if the state was in position to make and enforce any such law, (which point we do not pass upon,) still this law is now superseded by the United States Statute hereinabove referred to prescribing such fees and the disposition thereof. The United States statute upon this subject is paramount, and we think that the intention of congress is clear with respect to the collection, accountability, and disposition of the fees, the collection of which is provided for in said act.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.