

Fees of County Clerk, Accounted for to County. County Clerk and Recorder, Comparing Records for New County. Per Diem of County Clerk, for Comparing Records for New County.

Comparing of records for new county is a part of the official duty of the county clerk of the old county, and the per diem allowed for such comparing should be collected and accounted for to the county in the same manner as are the fees prescribed in Sec. 3168.

January 23rd, 1913.

Hon. H. S. McGinley,
County Attorney,
Fort Benton, Mont.

Dear Sir:

I am in receipt of your letter of the 17th inst., submitting the question:

"Is the county clerk and recorder required to account to the county for the per diem received for comparing transcribed records for a new county, or is such per diem retained by the clerk?"

There is, perhaps, no constitutional provisions which prevent the Legislature from allowing extra compensation for extra duties performed by the county clerk, but the Legislature has fixed the salary of that official at a definite sum (Sec. 3116, Revised Codes), and in Sec. 3112 of the Revised Codes it is said:

"No county officer, except as provided in this chapter, must receive for his use any fees, penalties, or emoluments for any official act rendered by him, but all fees, penalties or emoluments of every kind must be collected by him for the sole use of the county, etc."

And in Sec. 3139 of the Revised Codes it is provided that all salaried officers much charge and collect for the use of their respective counties * * * and pay into the county treasury all the fees now or hereafter allowed by law, etc. This latter section, perhaps, has direct relation to the fees enumerated in Sec. 3168. Sec. 2864 was enacted March 2nd, 1893, and has been a part of the general law of the state at all times since that date, relating to the transcribing of records when new counties are formed, and the comparing therein referred to is a part of the official duty of the county clerk of the old county, and if the duties enjoined thereby are more than the regular force of the office can discharge, the commissioners are given authority by the provisions of Sec. 3123 to employ extra help. The fees prescribed in Sec. 3168, as amended by Chapter 117, Laws of 1911, relate to the ordinary and general fees of the office of county clerk and have no relation to the per diem named in Sec. 2864, but this per diem should be collected and accounted for to the county in the same manner as are the fees prescribed in Sec. 3168.

This general subject has been heretofore treated of in a general

way by this office in opinions which you will find recorded in Opinions of Attorney General, 1910-12, at pages 25 to 27, and in the same volume at page 46.

Your opinion that this per diem should be collected for the use of the county is affirmed.

Respectfully yours,

D. M. KELLY,
Attorney General.