

County Clerk, Compensation for certifying transcribed records. Records, transcribed for new county, Compensation for certifying. Compensation, of County Clerk, for certifying to transcribed records. Deputies, to County Clerk. Additional Deputies, to County Clerk.

Sec. 2864 makes it the duty of the County Clerk of the parent county to certify under oath to the correctness of transcribed records for the use of the new county "and said county clerk shall be entitled to six dollars per day for his time actually spent in comparing the said records to be paid out of the general fund of the county requiring such comparison and certificate." Held: the compensation provided for belongs to the county and not to the clerk. Where additional deputies are necessary they are allowed by the Board of Commissioners and their salaries are fixed by the commissioners.

November 18, 1914.

Hon. John L. Slattery, ,
County Attorney, Glasgow, Montana.

Dear Sir:

I am in receipt of your letter of November 11th, as follows:

"Sections 2861-2-3, Revised Codes of Montana, 1907, provide for transcribing records of old county relating to property situated within a newly created county.

Then follows Sec. 2864, to-wit:

"When the transcript of such records herein provided for shall be completed and approved by the county commissioners of such county, they shall be delivered to the county clerk and recorder of the county from which such records were taken, and it shall be the duty of such county clerk and recorder to compare the records so transcribed with the original records as the same appear on the record books of the said original county, the county clerk and recorder, to which the said transcript shall be delivered for comparison shall certify under oath that the said transcribed records are full, complete and exact copies of the original records, and the said county clerk and recorder shall be entitled to six dollars per day for his time actually spent in comparing the said records, to be paid out of the general fund of the county requiring such comparison and certificate.

Sec. 2864, Revised Codes 1907.

Apparently this section has not been repealed.

Sometime ago Sheridan County was created out of a portion of Valley County. The transcript of the Sheridan County records has been completed. The County Clerk of Valley County has certified to the correctness of the transcript. Sheridan County has paid to the County Clerk of Valley County six dollars per day for time actually

spent in comparing the records. Part of this six dollars per day the County Clerk of Valley County has paid to additional clerks who aided him in comparing the records. A considerable balance remains in the hands of the County Clerk. May he retain this balance as his pay for comparing the records, or should he turn it into Valley County? In other words, is the payment prescribed by Sec. 2864, supra, a payment to the county, or is it a payment to the county clerk, individually, to be retained by him, without accounting to Valley County therefor? An early answer will be appreciated."

The section referred to has not been repealed, but is recognized as being in force by the provisions of Section 11 of Chapter 133, Session Laws of the 13th Legislative Assembly.

Chapter 112, Session Laws of the 13th Legislative Assembly, fixes the salaries which county officers are entitled to receive as annual compensation for services rendered by them according to the classification provided for in the Act. Section 3112, Revised Codes of 1907, reads as follows:

"The salaries of all county officers are as prescribed in this chapter. No county officer, except as provided in this chapter, must receive for his own use any fees, penalties or emoluments, for any official service rendered by him, but all fees, penalties and emoluments of every kind, must be collected by him for the sole use of the county, and are public moneys belonging to the County, and must be accounted for and paid into the county treasury, as provided in this chapter, and the county treasurer must place all of such fees in the contingent fund of the county."

Section 3158 provides:

"Every officer who fails or refuses to pay over any fees collected by him to the county treasurer, or fails to collect the same, as provided by this chapter, is punishable as provided in Paragraph 8593 (18) of the Penal Code."

In *State vs. Granite County Commissioners*, 23 Montana, 250, the Supreme Court said:

"The legislative assembly may, from time to time, increase or lessen the duties required to be performed by the officer; it may allow compensation for the added duties; it may also lessen the duties, and deprive him of the emoluments attendant upon the performance of the duties of which he is relieved. Of course, if at the time of his election the statute prescribed a salary, designed to cover all services that the officer as such might perform, then it is not within the competency of the legislative assembly to increase such salary nor to diminish it while the obligation still rests upon the officer to perform all or any of the services enjoined upon him at the time of his election."

The County Clerk is without authority of law to appoint additional deputies to assist him in the performance of his duties unless authorized by the county commissioners, and if additional deputies be ap-

pointed, the salaries allowed to them are fixed by the county commissioners at not to exceed the maximum salary of deputies provided for by law.

Revised Codes, Section 3123.

The deputies are public servants, and are paid by the public, through the instrumentality of the Board of Commissioners, and it is not within the province of a county clerk to employ special deputies without the sanction of the Board of County Commissioners, and pay them from moneys which ostensibly belong to the public.

In view of the constitutional provision directed against increasing or diminishing the salary of a public officer during the term for which he is elected, and of the statutory provisions above noted, I am of the opinion that the six dollars per day referred to in Section 2864, Revised Codes, belongs to the public and must be accounted for by the county clerk, and that he is entitled to no part thereof for services rendered by him under the law, in comparing and certifying to the transcribed records. I am further of the opinion, in order that the work in this regard may be faithfully and promptly done, that the county commissioners should make provision for the employment of necessary deputies.

Yours very truly,

D. M. KELLY.
Attorney General.