Naturalization Fees, Clerk to Account for. Clerks of District Court to Account for Naturalization Fees. Fees—Naturalization, to be Paid Into County Treasury.

It is the duty of the Clerks of the District Court to account to the county for moneys received by them in naturalization proceedings.

April 1, 1915.

Hon. H. S. Magraw,
State Bank Examiner,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 27th ultimo, submitting the question:

> "Is it the duty of the Clerks of the District Court to account to the county for moneys received by them in naturalization proceedings?"

Through the kindness of your department, and of Mr. Ramsey, Clerk of the District Court of Custer County, we have received memorandum issued by the Bureau of Naturalization, relating to this subject, which very materially aids us in the research, necessary to reach conclusions on the question submitted.

The Act of Congress of June 29th, 1906 (34 Stat. 596), relating to naturalization, confers certain authority upon the clerks of courts, and requires certain duties to be performed by them, and provides among other things that a fee may be charged, and that such clerks are

> "hereby authorized to retain one-half of the fees collected by him in such naturalization proceedings."

Under instructions heretofore issued by the Bureau of Immigration, the determination of this question was left to the decision of the various states; the general instructions issued, however, rather tending to the theory that the clerks were entitled to retain the fee so collected by them except that part thereof, which under the provisions of the Act they were obliged to account for to the general government. The doctrine adhered to by many of the states in the construction of this Act of Congress, at least prior to the determination of the question by the Supreme Court of the United States, was that the authority of the Clerks for the collection of these fees emanated from the Act of Congress; that the state had no jurisdiction over the matter, and that the extra work entailed upon the clerks in the issuance of naturalization papers was intended by Congress to be compensated for by the retention of these fees.

In October, 1906, this department, in an opinion rendered to Hon. T. E. Collins, then State Examiner, held that such fees might be retained by the clerks.

Opinions Attorney General, 1905-06, p. 397.

This construction of the law has been sustained by many state courts of last resort.

Fields vs. Multnomah, Co., 64 Ore., 117; 128 Pac. 1045;
Eldridge vs. Salt Lake Co., 37 Utah, 188; 106 Pac. 939;
Hampton Co. vs. Morris, 207 Mass., 167; 93 N. E. 579;
Price vs. Erie Co. 148 N. Y. Supp. 864;
State vs. Quill, 53 Ind. App. 495; 102 N. E. 106;
In re Beyer, 130 N. Y. Supp. 281;
People ex rel La Salle Co. v. Witzeman (decided Jan. 1915);
Phil vs. Martin, 125 Pa. 583;
Allegany Co. vs. Stengel, 213 Pa. 493;

U. S. v. Hill, 120 U. S. 169.

The last three cases cited, relate only to the general doctrine of extra compensation being allowed an officer when extra duty is required of him, and have not any specific relation to the more recent naturalization Act and all of these decisions, with two exceptions, were rendered prior to the analysis of the law by the Supreme Court of the United States, as heretofore noted. We are not advised as to the specific provisions of the statute in either New York or Illinois, and are, therefore, unable to say whether these decisions, which apparently run counter to the Federal decision, were based upon a state statute, or upon the construction of the Federal statute, operating within these states.

Other jurisdictions have given a contrary construction to this Naturalization Act of Congress, holding that under its provisions, the county officers must account to the county for the fees received in all cases where the statute of the State requires him to so account for fees received by him as such officer.

Barron Co. vs. Beckwith, 142 Wis. 519; 124 N. W. 1030;
Franklin Co. vs. Barnes, 68 Wash. 488; 123 Pac. 779;
Freeholders of Passaic vs. Slater, 90 Atl. (N. J.) 377;
San Francisco vs. Mulcrevy, 15 Cal. App. 11; 113 Pac. 339;

The Mulcrevy case, supra, was taken to the Supreme Court of the United States, and decided by that court on January 5th, 1914, in which under a statute very similar to the provisions of Section 3112, Revised Codes of Montana, it was held:

> "That the portion of fees retained under the Act of Congress of June 29, 1906, see 3592, 34 Stat. 596, by * * * * clerk in naturalization proceedings should be accounted for by him to the county as public moneys."
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> Mulcrevy v. San Francisco, 231 U. S. 669.

This being wholly a Federal question, that is, the construction of an Act of Congress, we take it that the construction given to that Act by the Supreme Court of the United States, is final, and that decision is to the effect that the clerk of the court, in the issuance of naturalization papers, acts ex officio as a county officer, and that the fees received by him should be accounted for to the county treasurer. The fact that extra work may be required is not any argument because it is within the function and authority of the legislature to require extra work of any official whose duties are not specifically prescribed in the State Constitution, and if the work proves to be beyond the capacity of the clerical force, the Board of County Commissioners, under authority of Section 3123, may allow extra help.

Your attention, however, is called to the fact that the clerks heretofore have collected and retained these fees under and by virtue of the construction of this Act of Congress, as made by the state authority, not only of this State, but of the other States, and under the sanction of the Bureau of Naturalization.

Yours very truly,

D. M. KELLY,
Attorney General.