

**Fees—Naturalization—Clerk of Court—Moneys.**

Clerks of district courts should account to the county as public moneys for that portion of the fees received by them in naturalization proceedings under the act of congress of June 29, 1926.

R. N. Hawkins, Esq.,  
Assistant State Examiner,  
Helena, Montana.

August 24, 1927.

My dear Mr. Hawkins:

You have requested my opinion whether it is the duty of the clerk of the district court to account to the county for moneys received by him in naturalization proceedings; that is, whether that portion of fees retained under the act of congress of June 29, 1906, should be accounted

by the clerk of the district court to the county as public moneys, as chapter 4894 R. C. M. 1921 provides, or should the clerk retain these fees?

In an opinion of former attorney general D. M. Kelly, which is in volume 6, Opinions of the Attorney General, at pages 110-111, it was held that it is the duty of the clerks of the district court to account to the county for moneys received by them in naturalization proceedings. The opinion is based upon a holding of the supreme court of the United States in *Mulcreany vs. San Francisco*, 231 U. S. 669, to the effect that the portion of fees retained under the act of congress by clerks in naturalization proceedings should be accounted for by them to the county as public moneys. I agree with the conclusion above expressed.

In this connection permit me to say that under date of May 19th of this year I wrote a letter to Mr. Calhoun, clerk of the district court at Livingston, Montana, expressing my general concurrence in the views of Judge Stong to the effect that the act of congress of June 29, 1906 "has superseded all state legislation on the matter of fees to be paid in naturalization proceedings." In that letter I made use of the following language:

"You should collect the schedule of fees and make disposal of same in accordance with the Federal Act."

At the time of writing the sentence above quoted I was giving consideration only to the general question of whether the act of congress superseded state legislation. The language which I have quoted above was inadvertently used, and insofar as the same is in conflict with the views expressed in this opinion, the latter are controlling.

Very truly yours,

L. A. FOOT,  
Attorney General.