

August 3, 1933.

You inquire whether or not the county clerk of Phillips County may, under the provisions of Section 3, Chapter 109, Laws of 1925, retain for his own use the sum of five cents which he receives from the State Treasurer out of the bounty fund for each scalp of a wolf or coyote or each lower jaw of a mountain lion accounted for by him in his report to the Livestock Commission.

Section 4864, Revised Codes of 1921, as amended by Section 3, Chapter 141, Laws of 1925, reads as follows:

"No county officer shall receive for his own use any fees, penalties or emoluments of any kind, except the salary as provided by law, 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 must be accounted for and paid to the county treasurer as provided by section 4887 of this code and shall be credited to the general fund of the county."

The courts generally hold that under a statute like that just quoted the fees which a public officer collects belong not to him but to the county or municipality which he serves. (*Mulcrevy, v. San Francisco*, 231 U. S. 669, 58 Law. Ed. 425; *Lewis v. United States*, 244 U. S. 134, 61 Law. Ed. 1039; *Gregory v. Milwaukee County*, 201 N. W. 246; *Dishman v. Coleman*, 50 S. W. (2d) 504. *York County v. Fry*, 138 Atl. 858; *In re MacDonald*, 248 Fed. 983; *Duclos v. Harris County*, 291 S. W. 611.)

It cannot be disputed that the duties which section 3 of Chapter 109 casts upon the county clerk are official in character and that the sum above mentioned is paid him on account of the performance thereof. To justify him in claiming the money as his own he must be able to point to some statute expressly or impliedly authorizing him so to do. Our investigation has not disclosed any such statute.

It is our view, therefore, that the county clerk should pay the money in question to the county treasurer.

Opinion No. 287

County Clerk—Fees—Bounties—Predatory Animals—County Treasurer.

HELD: The county clerk must pay over to the county treasurer the fees received under Section 2, Chapter 109, Laws of 1925, the act providing bounties upon certain predatory animals.