

Opinion No. 150.**County Clerks—Sheriffs—Fees—
Bounties—Predatory Animals—County
Treasurer.**

Held: County clerks and sheriffs must pay into the county treasury the fees received by them under Section 3417.6, Revised Codes of Montana, 1935, which statute provides for bounties upon certain predatory animals.

October 22, 1943.

Mr. Paul Raftery, Secretary
Live Stock Commission
State Capitol
Helena, Montana

Dear Mr. Raftery:

You request my opinion concerning the disposition of the ten cent fee received by sheriffs for the examination of pelts and skins presented for bounty and the five cent fee received by county clerks 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 to the Livestock Commission as provided in Section 3417.6, Revised Codes of Montana, 1935.

Section 4864, Revised Codes of Montana, 1935, states:

"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." (Emphasis mine.)

This section as quoted above, is explicit that a salaried county official must pay fees collected by him to the county. This is in accord with the general holding of the courts as the text in 43 Am. Jur. 149, reads as follows:

"But where the law prescribing the remuneration of a particular officer confines it to a fixed salary, he is generally not entitled to retain fees or commissions received by him for the performance of services connected with his office, particularly where the duty is imposed upon him to pay such fees and commissions into the public treasury."

The sheriffs and county clerks receive a fixed salary under the provisions of Section 4867, Revised Codes of Montana, 1935, as amended by Chapter 127, Laws of 1941 and Chapter 169, Laws of 1943, and no exception is made allowing the retention of above mentioned fees received by virtue of their offices either in Section 4867, supra, or elsewhere in the statutes.

It is therefore my opinion that county clerks and sheriffs must pay into the county treasury the fees received by them under Section 3417.6, Revised

Codes of Montana, 1935, which statute provides for bounties upon certain predatory animals.

Sincerely yours,
R. V. BOTTOMLY
Attorney General