

**Fees, Clerk of the Court. Posting Notices. Clerk of the Court,
Fees Of, Probate.**

The clerk of the district court is not entitled to make any charge for posting notices of hearing on petition for letters of administration.

Helena, Montana, September 4, 1908.

Hon. F. H. Ray,
State Examiner,
Helena, Montana.

Dear Sir:—

I am in receipt of your favor of the 3rd inst. submitting for the consideration of this office the proposition:

“Can the clerk of the district court legally make charge for posting notices of hearing of petition for letters of administration?”

The provisions of Section 3112, Revised Statutes, are to the effect that no county officer shall receive for his own use any fees, penalties or emoluments, and that all such fees, penalties or emoluments collected by him must be for the sole use of the county.

Sections 3169 and 3170 of the Revised Statutes enumerate the fees which may be charged by the clerk of the district court; the latter section having reference to probate proceedings. Neither of these sections permit the collection of any fees for the posting of such notices, but Section 7440, Revised Statutes, makes it the duty of the clerk to give notice and provides the manner in which such notice must be given. The first subdivision of Section 3170, supra, provides that at the time of filing the petition for letters of administration, etc., a fee of five dollars must be collected by the clerk, and there appears to be no provision or law for collecting any other fee relative to the filing of the petition or to the posting of notice of the hearing thereon. The posting of the notice is a part of the official duties of the clerk and is covered by his salary, and he cannot legally make any charge for his official services in posting the notices.

Very truly yours,
ALBERT J. GALEN,
Attorney General.