

Fees of Clerk of Court. Transcript of Judgment, Whether Fee for Filing. Case, Transfer of. Transfer of Case to Another Court, Fee for.

There is not any authority of law for charging fee for filing a transcript of judgment entered in one District Court in another District Court.

Where a case is transferred, the fee of \$5, named in Section 3169, may be charged.

October 15th, 1914.

Hon. August Colin,
Clerk of the District Court,
Glendive, Montana.

Dear Sir:

I am in receipt of your letter of the 9th instant, submitting the following questions:

1. When a transcript of judgment is filed in our court, is there a fee in connection?

2. When a case is transferred from another court, is there a fee, even if the court is the same judicial district?

The first of these questions has been heretofore considered by this department, where it was held that no fee attached in such cases.

Opinions Attorney General 1908-10, p. 433.

This opinion was based upon the general proposition that there is no direct authority of law for making such charge, and that without such authority none could be made. It was also based upon the fur-

ther proposition that any execution issued in such cases should be issued from the court where the original judgment was entered. It was also held that the provisions of Section 3169, relating to filing and docketing transcript of judgment, related only to judgments from a justice court. This opinion is also strengthened by the provision of our statute, Section 6810, relating to the filing in one court of a transcript of original docket in another court—for the same provision is found in the following sections, particularly Section 6812, relating to the filing of a similar transcript from a Federal Court. In the latter case, it could hardly be urged that the state court in which such transcript was filed would have the authority to issue an execution. If the filing of the transcript then, does not have the effect of a judgment any fee had, therefore, could not be charged back against the debtor. Hence, the first question submitted must be in the negative.

The second question, however, relates to the transfer of a case, not the filing of a transcript of judgment. This, I believe to be covered by the Subdivision of Section 3169, providing:

“For filing and entering papers of transfer from other courts, \$5.00.”

and this would attach, even though the court from which the case so transferred is in the same judicial district.

Yours very truly,

D. M. KELLY,
Attorney General.