

Return on Order of Sale on Foreclosure—Duty of Clerk of Court to Record—Charging Fee for Recording.

The Clerk of the District Court must record an order of sale and sheriff's return on foreclosure sale of real estate.

The Clerk of the Court is not permitted to make a charge for recording the above mentioned papers.

F. S. P. Foss, Esq.,
County Attorney,
Glendive, Montana.

My dear Mr. Foss:

I have your letter in which you request my opinion on the following questions:

1. Must the Clerk of the District Court record an order of sale and sheriff's return on foreclosure sale of real estate?
2. If so, can a fee of 20 cents per folio be charged for recording the same?

As to your first question, Section 6816 of our statute provides, in part, as follows:

"If any real estate be levied upon, the clerk must record the execution and the return thereto at large."

Section 3048 of our statute defines the general duties of the Clerk. Subdivision 3 thereof provides, in part, as follows:

"Enter all orders, judgments and decrees proper to be entered."

An order of sale and return thereon in foreclosure proceedings perform the same function as an execution and return in ordinary actions not involving the foreclosure of any mortgage.

While there is no specific statute making it the duty of the Clerk to record an order of sale and sheriff's return on foreclosure as such, it is my opinion that, inasmuch as it has the same effect as an execution and return, the Legislature intended by Section 6816, *supra*, to require the Clerk to record them.

As to your second question, it is my opinion that the Clerk is not permitted to charge 20 cents per folio, or any other amount for recording the same. Chapter 88 of the 1917 Session Laws enumerates the fees which may be charged by the Clerk of the District Court, and at no place is there any authority given for making a charge for recording papers. The charge permitted per folio is for preparing, but not for recording various papers.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.