

**County Clerk—Liability of to the County for Acceptance of a Bad Check in Payment of Recording Fees.**

A County Clerk, who accepts a check in payment of a recording fee and records the papers, and which check is later dishonored, is liable to the county for the amount of the recording fee.

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Assistant State Examiner,  
Helena, Montana.

My dear Mr. Hawkins:

You have inquired whether a County Clerk who receives documents to be recorded accompanied by a personal check in payment of the recording fee, and who records the documents, is personally responsible to the county for the amount of the fee when the check is later dishonored for lack of funds.

Section 3168 of the Revised Codes of 1907, as amended by the Laws of 1911, page 251, provides for the collection by the County Clerk of various amounts of money for recording various documents. Section 3139 of the Revised Codes reads in part as follows:

"All salaried officers of the several counties must charge and collect for the use of their respective counties, and pay into the county treasury on the first Monday in each month, all the fees now or hereafter allowed by law \* \* \*."

These sections contemplate the collection by the County Clerk of the amounts provided in cash, and if a County Clerk accepts a personal check in lieu of the cash required to be collected, the transaction is a personal one between him and the person whose check he accepts, and is at his own risk. He is responsible to the county for the amount of the fee required by law to be collected, and has no authority to turn over to the county, or the county to accept, paper of doubtful value, or anything but cash. He has the right to demand that the fees be paid in cash in advance and to refuse to record documents until the proper fee is so paid. (Sec. 3043, Revised Codes 1907.)

In *Commissioners v. McCormick*, 4 Mont. 115, 133, a case in which a County Treasurer included a personal check as cash in making settlement with the county, the court said:

"Applying this statute to the case at bar, it was clearly the duty of the treasurer to present to the board to be counted, money or vouchers upon which money belonging to the county has been legally paid in the course of his official business or transactions. He could not lawfully hold or present as a part of the county funds, in the settlement of his accounts with the board of commissioners, a check of a third party. Such a paper or instrument is not money in the legal acceptance of the term."

It is therefore my opinion that a County Clerk who accepts a check in payment of a recording fee and records the papers, which check is later dishonored, is liable to the county for the amount of such recording fee.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.