

Clerk of Court—Fee for Filing Statement of Voluntary Dissolution of Corporation.

The Clerk of the District Court is not authorized to make any charge for the filing of a statement of dissolution of a corporation, but is authorized to make a charge of 50 cents for certifying to the copy of the statement required to be filed in the office of the Secretary of State under Section 3 of Chapter 119 of the Laws of 1919.

L. Q. Skelton, Esq.,
State Examiner,
Helena, Montana.

My dear Mr. Skelton:

Your office has inquired as to what is the correct fee to be charged by a Clerk of the District Court for filing a statement of dissolution of a corporation under the provisions of Chapter 119 of the Laws of 1919, it appearing that some Clerks of Court are making a charge of \$5 as for the commencement of a proceeding, while others make no charge for the filing of the statement, but make a charge of 50 cents for certifying the copy required to be filed in the Secretary of State's office.

Chapter 119 of the Laws of 1919 contains no requirement for the payment of a filing fee when such statement is filed. Section 3169 of the Revised Codes of 1907, as amended by Chapter 88 of the Laws of 1917, the general law fixing fees that may be charged by the Clerk of the District Court, likewise contains no provision covering the filing of such a document.

Apparently an error was made in framing the Act in question in providing that such statements should be filed in the office of the Clerk of the District Court instead of in the office of the Clerk and Recorder, inasmuch as other papers required to be filed in connection with corporations, including the original incorporation papers and annual reports of corporations, are filed in the latter office. Section 7323 of the Revised Codes of 1907, it is true, provides a method of dissolution of corporations by court order, but a proceeding in court for the purpose of procuring a court order dissolving a corporation would necessarily be carried on through the Clerk of the Court's office. However, the Act as it reads requires the filing of this instru-

ment in the office of the Clerk of the District Court, and until the Legislature changes this requirement, statements of dissolution must be filed in said office.

The mere filing of the statement in question is not, however, an action or proceeding within the provisions of Chapter 88 of the Laws of 1917, and the charge provided for the commencement of an action or proceeding is, therefore, not a proper one. "Proceedings both in common parlance and in legal acceptation, imply action, procedure, prosecution, * * *. If it is a progressive course, it must be advancing, and cannot be satisfied by remaining at rest." (*Beers v. Haughton*, (U. S.) 9 L. Ed. 145.)

The statement coming within none of the provisions of Chapter 88, and no provision being made for any filing fee in Chapter 119, *supra*, it is my opinion that the Clerk of the District Court is not authorized to make any charge for the filing of the statement of dissolution, but is, of course, authorized to make a charge of 50 cents for certifying to the copy of same required to be filed in the office of the Secretary of State by Section 3 of said chapter.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.