

Justice of the Peace—Power of Clerk to Draw Papers and Pleadings Before the Justice—Fees of Clerk for Drawing Papers.

A clerk of the Justice of the Peace is his employee, and the law does not permit him to practice law before such Justice of the Peace. The clerk of the Justice of the Peace is not permitted to charge or collect any fee, except such as the law permits the Justice of the Peace to collect.

Leslie B. Sulgrove, Esq.,
Deputy County Attorney, Silver Bow County,
Butte, Montana.

My dear Mr. Sulgrove:

You have requested my opinion whether a clerk employed by a Justice of the Peace may draw pleadings and prepare other papers in civil and criminal cases pending before such Justice of the Peace.

Section 3114, Revised Codes of 1907, strictly prohibits a Justice of the Peace practicing law, drawing contracts, conveyances or other legal instruments or documents, taking any claim or bill for collection, or performing any legal duties other than those prescribed by law as his official duties in the conduct of cases and proceedings in his court.

There is no provision in the law providing for a clerk in a Justice of the Peace court; hence, any such person employed by a Justice of the Peace would be an employee of such Justice, and not in any sense an officer.

The law prohibits a Justice of the Peace having as a partner any person practicing law (Sec. 6317, Rev. Codes of 1907), and the wisdom of such a provision is obvious. In fact the statutes throw all safeguards about the rights of litigants in the courts of Justices of the Peace to insure, as far as possible, that no undue influence may affect the judgment of such officers. The only reason that clerks of Justices were not included in the prohibition is probably because the Legislature did not contemplate that any Justice would employ such assistance. Clerks of Court, County Clerks and Sheriffs were all included (Sec. 6316, Rev. Codes of 1907).

To allow a clerk employed by a Justice of the Peace to practice law before such Justice, his employer, would certainly be dangerous to the rights of litigants, and public policy would prohibit it. This

would be especially true where such clerk keeps the docket for the Justice, his employer, and files and enters judgments therein. Such clerk is an employee and agent of the Justice, and it is my opinion that the same disqualifications and limitations apply to such employee as apply, under the law, to the Justice of the Peace himself.

It follows that the limitations fixed by law as to fees that may be collected would apply to such clerk, and he would not be authorized to charge or collect any fee except such as the law permits the Justice of the Peace himself to collect.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.