

County Clerk and Recorder—Fee for Making Pencil Abstract on Chattel Mortgage, With Certificate and Seal—Whether County Clerk and Recorder May Omit Chattel Mortgage, the Lien of Which Has Expired.

Section 3168 of the Revised Codes of 1907, relating to the fees to be charged by a County Clerk and Recorder, construed.

A County Clerk and Recorder should not omit from pencil abstracts chattel mortgages, the lien of which has expired.

Jos. C. Tope, Esq.,
County Attorney,
Terry, Montana.

My dear Mr. Tope:

You have submitted to this office a letter of inquiry as to the proper charges to be made by the Clerk and Recorder of your county for the following services:

“For a statement showing all chattel mortgages of record against any certain individual, setting forth the date of the mortgage, date of filing, date due, amount, property covered and location of the mortgaged property, to be followed by a certificate of the County Clerk to the effect that no chattel mortgages other than those shown appear of record against this person, said certificate having the seal attached.

“Would it make any difference in the charge if the seal was not attached?

“Should the County Clerk show all mortgages that have not been released, or should he show only those that have been filed within two years and sixty days next preceding the date of such statement, or those that have been renewed according to the statute? In other words, would the Clerk be justified in omitting from such a statement, all mortgages that have been filed over two years and sixty days and were not renewed, assuming that such mortgages had expired and were of no effect?

“What is the meaning of the paragraph of the law concerning the fees of the County Clerk, which relates to ‘searching any index record?’ Just what service does this cover, and when should this charge be made?”

You have submitted with your question a brief of the law as set forth in the statute relating to fees and charges by County Clerks, and I entirely agree with the conclusions you have arrived at in each instance. I will, therefore, follow the outline as contained in your letter for the purpose of adding any additional information that might seem necessary.

Section 3168 of the Revised Codes of 1907 provides, in part, as follows:

"For filing and recording each instrument of writing allowed by law to be recorded, except as hereinafter provided, for first folio, thirty cents.

"For each subsequent folio or fraction thereof, fifteen cents.

"For each entry in index, ten cents.

"For certificate that such instrument has been filed and recorded, with seal affixed, fifty cents.

"For searching any index, record of files of the office, for each year, when required, in abstracting or otherwise, fifteen cents.

"For abstract of title, when required made from original records and files, for each conveyance, incumbrance, or other instrument affecting title, fifty cents."

I agree with your conclusion that the fee of 50 cents for certificate that an instrument has been filed for record, with a seal, would cover any deed, mortgage, chattel mortgage or other instrument, whether filed for record or simply filed. This certificate, it would seem, should be given where a copy of an instrument has been prepared and presented to the Clerk for his certificate that it is a true and correct copy of the instrument as appears of record, etc. This would be the only charge made in such a case. Where a certificate is made at the time of the filing for record, no seal need be attached; or, if attached, no charge should be made therefor. In this connection see, also, an opinion by a former Attorney General, reported in Volume 3, at page 119; also an opinion in the same volume at page 205, further illustrating this proposition.

I likewise agree with your conclusion regarding the charge to be made for searching the indexes for instruments filed or recorded. The charge of 15 cents for each year, was no doubt considered a sufficient and proper charge to be made, whether one instrument was filed within the year or whether several, since the entire record would necessarily have to be searched for that year. Also in this connection it is well to note that a charge of 10 cents is made for indexing an instrument. This would further tend to show that the 15 cents was intended to cover a particular period and not a single instrument.

This charge for searching the indexes is in addition to the charge of 50 cents for abstracting the instrument as shown in your first question.

The charge referred to as 50 cents for abstracting an instrument affecting title would, of course, include all those necessary facts required in proper abstracting, such as the name of the parties, the date of the instrument, consideration, description of the property, words of conveyance, etc.

In answering your question as to whether the Clerk would be justified in omitting from the abstract, mortgages that had been filed over two years and sixty days and were not renewed, I see no reason why the Clerk should not observe the same rule in this regard as is followed by abstractors generally, which is to include all instruments together with the satisfactions or releases, leaving the examiner of the abstract to determine the legal effect of the release or satisfaction in each case; otherwise, the Clerk is passing upon the sufficiency and legal effect of the instrument. The party making the request could, of course, confine his request to the instruments such as have not expired, or been canceled or satisfied.

You have also asked whether it would make any difference in the charge if the seal were attached. I take it that this has reference to the certificate to the abstract. As there is no provision for an extra charge for such a certificate, it would necessarily follow that no extra charge could be made for this service, in addition to the charge that is made for abstracting each instrument and for searching the indexes, since such a certificate would be implied in connection with the work.

I am, therefore, of the opinion that it would not make any difference in the amount of the charge if the seal were attached, as this would be necessary in order to authenticate the act.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.