

Clerk of District Court — Whether a Fee Should be Charged for Filing a Complaint in Ouster Proceedings.

The Clerk of the District Court should not charge a fee for filing a complaint in ouster proceedings against county officers.

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

My dear Mr. Skelton:

You have requested my opinion as to whether the Clerk of the District Court should charge a fee for filing a complaint in ouster proceedings against county officers.

Removal proceedings have been classed as proceedings of a criminal nature. (State ex rel. Houston v. District Court, 61 Mont. 558).

It has likewise been held in such proceedings that, though instituted by the Attorney General of the State, witness fees must be paid by the county. (Griggs v. Glass, 58 Mont. 476).

In the case of *Griggs v. Glass* it was held that such an action is conducted in behalf of the county, even though not in the name of the county or in the name of the state. In speaking of this the court said:

"If the proceeding for removal had been brought under other sections of the statute, there could be no denial of the duty of the county to pay the witness fees, without obligation upon the part of the state at large. We can see no difference in legal effect merely because the proceeding is brought under another section to accomplish the same purpose. In such a proceeding instituted by the attorney general, in which the county may be presumed to be vitally interested, and whose interests are affected, and in whose behalf the proceedings are in fact conducted, even if not nominally necessarily in its name or the name of the state, the authority granted the attorney general by virtue of the statutes cited is sufficient to bind the county to the payment of witnesses whose testimony may be necessary to a determination of the proceedings." Section 4893 of the Revised Codes of 1921 provides as follows:

"No fees must be charged the state, or any county, or any subdivision thereof, or any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees."

It is my opinion that the Clerk of the District Court should not charge a fee for filing a complaint in ouster proceedings against county officers.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.