

Clerk of Court—Fees for Petition for Order of Sale of Property by Receiver of National Bank—Collection of for Filing Successive Petitions.

The filing of a petition for an order allowing the receiver of a bank to sell personal property is the commencement of a proceeding within the meaning of the statute, and the Clerk of the District Court should collect a filing fee of \$5 therefor.

The filing of successive petitions for the sale of property constitutes steps in the same proceeding, and only one fee should be charged by the Clerk of the Court.

George W. Magee, Esq.,
County Attorney Teton County,
Choteau, Montana.

My dear Mr. Magee:

You have requested an opinion of this office on the question whether the Clerk of the District Court should require a filing fee of the receiver of a national bank for filing a petition for an order to sell property of the bank under the laws providing for the sale of such property; also whether, in case more than one such petitions are filed, a filing fee will be required for each petition.

Section 3169 of the Revised Codes of 1907, as amended by Chapter 88 of the Laws of 1917, which fixes the fees to be collected by the Clerk of the District Court, requires the Clerk to collect the sum of \$5 at the "commencement of each action or proceeding." Sections 7176, 7177 and 7178 include the requirements of the law as to who must and who need not pay fees to the Clerk of Court in connection with actions.

The law apparently does not contemplate that the Clerk of the District Court should receive and file papers in any proceeding without collecting a filing fee therefor except in the cases enumerated in the above statute, and the receiver of a bank is not mentioned among the exceptions.

It has been held that national banks and receivers thereof are subject to costs of action, and that receivers may be required to give security for same. (34 Cyc. 387; Platt v. Adriance, 90 Fed. 772; Pepper v. Fidelity, etc. Co., 125 Fed. 822.) Section 5238 of the U. S. Revised Statutes (6 Fed. Ann., 2nd Ed.) makes provision for their reimbursement to the receiver, as follows:

"All expenses of any receivership shall be paid out of the assets of the association (for which receiver is acting) before distribution of the proceeds thereof."

The question whether a fee should be required for filing a petition for the formation of an irrigation district was formerly before this office, and it was held (8 Opinions of Attorney General, 413) that the Clerk of the District Court should collect a fee of \$5 for the filing of such petition on the ground that the same, while not "the commencement of an action," is the "commencement of a proceeding" requiring the collection of a fee of \$5 when such petition is filed.

It is my opinion that the filing of the petition for an order allowing the receiver of a bank to sell personal property is the commencement of a proceeding within the above statute, and that the Clerk of the District Court should collect a filing fee of \$5 at the time of the filing of such petition.

In regard to your second question, it would seem that the matter of closing up the affairs of a bank would be analogous to an estate matter, and that although various orders may be asked and various petitions filed in connection with the bank's property, nevertheless the real proceeding is the winding up of the affairs of the bank, and the various petitions are but steps in or incidents of the one proceeding, and would not require the payment of separate filing fees for each petition.

It is, therefore, my opinion that the Clerk of the District Court should collect from the receiver of the national bank the sum of \$5 for filing a petition for sale of personal property, but that such filing fee will cover the various petitions for sales of property in connection with the winding up of the affairs of such bank.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.