

Counties—Fees—Secretary of State.

No fee should be charged a county under section 9113 R. C. M. 1921 as section 4893 R. C. M. 1921 is applicable to state as well as county officers.

C. T. Stewart, Esq.,
Secretary of State,
Helena, Montana.

Nov. 15, 1926.

My dear Mr. Stewart:

You have requested my opinion on the following question:

"Under the provisions of section 9113 R. C. M. 1921, is the secretary of state authorized to collect the fee mentioned therein from a county?"

Section 9113 referred to provides as follows:

"When such order is made, the summons and complaint, together with a copy of such order, shall be served upon the secretary of state of the state of Montana, or in his absence from his office, upon the deputy secretary of state, by delivering to and leaving with him a true copy of the summons and complaint, and a copy of such order, and shall likewise pay to the said secretary a fee of two dollars, which shall be covered into the state treasury by him, and may be taxed as costs by the plaintiff."

Section 4893 R. C. M. 1921 provides:

"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 also such services must be performed without the payment of fees."

While section 4893, supra, was enacted long prior to section 9113 and while this section is found in chapter 35 of our code, which provides for salaries and fees of county officers, it would appear from the very purpose of the statute that it is equally applicable to state officers. It would be a harsh rule to hold that the county could not charge the state a filing fee but that the state could charge the county. There is no more reason for the state to charge a county the fee provided for in section 9113, which must simply be paid by the taxpayers and returned to the taxpayers, than there is for the county to charge the state, or any subdivision thereof, a fee which would be handled with the same result.

It is, therefore, my opinion that the intent of section 4893 was to abolish the payment of fees by the state, or county, or any subdivision thereof, and therefore you should not charge the county the fee in question.

Very truly yours,
L. A. FOOT,
Attorney General.