

Opinion No. 188.**County Clerk and Recorder—Duties,
County Clerk and Recorder—Deeds—
Lands—Penalties.**

Held: County clerk and recorder must file deeds duly executed regardless of whether plat as required by Section 4993, Revised Codes of Montana, 1935, is on file or not.

March 9, 1944.

Mr. Milton G. Anderson
County Attorney
Richland County
Sidney, Montana

Dear Mr. Anderson:

You have asked an opinion of this office either rejecting or affirming your opinion to your clerk and recorder relating to filing deeds to tracts of land of less than ten acres when there is no plat on file as required by Section 4993, Revised Codes of Montana, 1935.

As you pointed out in your opinion, Section 4993, Revised Codes of Montana, 1935, is an obligation on the person who owns a plat of land and wishes to sell the same in separate tracts of less than ten acres; it is not a restriction on the purchaser. Said Section 4993 makes it a misdemeanor to sell small tracts, but does not refer to the purchaser or to the duties of the clerk and recorder of the county.

Section 4805, Revised Codes of Montana, 1935, as you stated, well defines the duties of the clerk and recorder and is mandatory, and provides if the instrument is properly executed and authorized by law to be recorded, the proper fee paid or tendered, that he must file the same.

The clerk and recorder of a county is not a law enforcing officer and the enforcement of any criminal statutes, is not within his prescribed duties. The only other contact he would have with criminal statutes would be in connection with the operations of his own work or as any individual citizen.

It is therefore my opinion that if a properly executed deed is presented to the county clerk and recorder for recording, upon payment of the prescribed fees, it is his duty to file and record the same, regardless of whether there had previously been a plat filed as required by Section 4993, Revised Codes of Montana, 1935; otherwise he is subject to the penalty as prescribed in Section 4808, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY
Attorney General