

**Opinion No. 35.****Clerk of Court—Probate—  
Stenographer, Court—Fees—  
Court Stenographer.****Held: Fees for the court stenographer's services should be collected in probate proceedings when there is an issue of fact tried by the court.**

May 2, 1945.

Mr. W. A. Brown  
State Examiner  
State Capitol  
Helena, Montana

Dear Mr. Brown:

You referred for my opinion a letter sent to your office by W. L. Riddle, Clerk of the District Court, Fallon County. The question asked by Mr. Riddle is as follows:

Will you please advise us if we are to collect stenographer fees in probate cases when there is an objector to the petition and testimony is taken by the court stenographer at the hearing?

Section 8932, Revised Codes of Montana, 1935, provides as follows:

“Amount to be paid by each party in civil action. In every issue of fact in civil actions tried before the court or jury, before the trial commences, there must be paid into the hands of the clerk of the court, by each party to the suit, the sum of three dollars, which sum must be paid by said clerk into the treasury of the county where the cause is tried, to be applied upon the payment of salary of the stenographer, and the prevailing party may have the amount so paid

by him taxed in his bill of costs as proper disbursements."

The problem presented is whether an issue of fact which is tried in a probate proceedings is a civil action within the meaning of the above noted statute.

The word "civil" is given various meanings, and in 11 Corpus Juris 793, it is defined as follows:

"In the language of the law, the word has various significations . . . In contradistinction to 'criminal' it indicates the private rights and remedies of men as members of the community in contrast to those which are public and relate to the government . . ."

It would seem that the statute contemplates that all litigants who utilize the services of the court stenographer must pay the fee for the same, except those who are tried in a criminal proceeding. I realize historically probate courts were distinguished from civil courts, but I believe the legislature in the statute under consideration intended a fee be charged in all cases where there was an issue of fact other than criminal cases.

This office has previously considered Section 8932, and in Opinion No. 151, Volume 18, Report and Official Opinions of the Attorney General, said:

"In construing a statute, in order to give effect to the intent of the legislature, the object of the statute must be kept in mind. (59 C. J. 961, Sec. 571.) To this end it must be given a reasonable or liberal construction; and if it is susceptible of more than one construction, it must be given that construction which will best effect its purpose. (Id.) 'Statutes are to be construed so as best to effectuate the object of the legislature.' (State v. Mills, 81 Mont. 86, 261 Pac. 885.) Many other cases could be cited to the same effect but there is no question as to the rule.

"Unquestionably the object of the above section is to require litigants whose causes are tried before a court or jury requiring the services of a court reporter, to pay a reasonable fee toward the salary of such reporter."

I agree with the authorities and reasoning in the above quoted portion of the opinion and believe it applies

with equal force to the question submitted concerning probate matters.

It is therefore my opinion that fees for court stenographer's services should be collected in probate proceedings when there is an issue of fact tried by the court.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General