

Opinion No. 111

**County Clerk and Recorder—Fees—
Mining Claims—Affidavits—Statutes
—Sections 25-231, 50-704, Revised
Codes of Montana, 1947.**

Held: The County Clerk and Recorder of each county shall charge and receive a fee of One Dollar (\$1.00) for each mining claim covered by an affidavit of annual assessment work irregardless of whether the affidavit covers one or several mining claims.

August 16th, 1952.

Mr. Smith McNeill
County Attorney
Lincoln County
Libby, Montana

Dear Mr. McNeill:

You have requested that I issue an official opinion as to that part of Section 25-231, Revised Codes of Montana, 1947, which pertains to the fee the Clerk and Recorder is to charge for recording an affidavit of annual labor on a mining claim. The specific question involves the contention of mine owners and operators that, when an affidavit is filed covering several claims, the fee to be charged is based on the affidavit and not on the number of claims covered therein.

As originally enacted the section in controversy read:

"For filing, recording and indexing each affidavit of annual labor on mining claims, for each claim named therein, One Dollar (\$1.00)."

By Chapter 87, Laws of 1941, the section was amended to its present form:

"For recording and indexing each affidavit of annual labor on mining claim, including certificate that such instrument has been recorded with seal affixed, One Dollar (\$1.00)."

The effect of the amendment was to delete the phrase, "for each claim named therein," and to change the plural, "claims", to the singular,

"claim", as that word first appeared in the statute prior to amendment.

Section 50-704, Revised Codes of Montana, 1947, states that the owner of a claim who performs the annual work required by the laws of the United States in order to prevent forfeiture of a claim, may file in the office of the county clerk an affidavit that the requirements of the federal laws have been complied with. It has been held that such statutes as this relate, not to the effect of doing the work, or making the improvements, as required by law, but to the method of preserving prima facie evidence of the facts that such requirements have been fulfilled. See, *Coleman vs. Curtis*, 12 Mont. 301, 30 Pac. 266. Both Section 25-231 (supra) and Section 50-704 (supra) were enacted in 1887. Consequently, Section 25-231 (supra) creates a fee for the service which the clerk performs for the mine operators under the statute.

The statutes relate to the same subject matter and are not inconsistent with one another, therefore, they are in pari-materia and are to be treated prospectively and construed as one act. In *re Clark's Estate*, 105 Mont. 361, 74 Pac. (2d) 401. Since each claim filed in accordance with Section 50-704 (supra) requires separate recording and indexing by the county clerk, the two statutes cannot be construed in such a manner as to allow the filing of several claims through one affidavit for a fee of One Dollar (\$1.00). This would defeat the purpose of Section 25-231 (supra) by an indirect method.

Also, both statutes use the word "claim" in the singular. When the legislature deleted the phrase, "for each claim named therein," and substituted the singular for the plural in the word "claim", it was the intent of that body that the deleted phrase was redundant and no longer necessary. It was not the intent of that body to reduce the fee which the operators pay for a service performed for their benefit alone by the county clerks.

In 1939, before the amendment, Section 25-231 (supra) was construed by then Attorney General Freebourn, *Opinions of the Attorney General*, Volume 18, Opinion No. 164. The Attorney General pointed out:

"We do not think the joining of the two under one cover or in one

paper defeats the purpose or intent of the statute to charge a separate fee for each instrument."

Thereafter the section was amended to its present form. If it had been the intention of the legislature to change the law as interpreted by the Attorney General the word "claims" would have been left unchanged and a change would have clearly been expressed.

It is therefore my opinion that the county clerk is to charge and receive a fee of One Dollar (\$1.00) for each mining claim covered by an affidavit of annual assessment work irregardless of whether the affidavit covered one or several mining claims.

Very truly yours,
ARNOLD H. OLSEN
Attorney General