

Opinion No. 8**Judgment Roll—Refused Instructions—Bill of Exceptions****Held: Refused instructions should be included in the original judgment roll.**

March 12, 1957

Mr. Albert A. Stark
Clerk of the District Court
Glendive, Montana

Dear Mr. Stark:

You requested my opinion as to whether or not refused instructions should be included in the original judgment roll.

Neither the Constitution nor the statutes of the State of Montana give a complete statement of the documents to be included in the judgment roll. For many years the judges and clerks of each district have followed their own judgment in including documents which are not specifically enumerated by statute.

Section 93-5707, Revised Codes of Montana, 1947, sets out in part that the judgment roll shall contain:

“ . . . the pleadings, a copy of the verdict of the jury, or finding of the court or referee, all bills of exceptions taken and filed,

all orders, matters, proceedings deemed excepted to without bill of exceptions . . ."

The court in *State v. Daw*, 99 M., 232, 43 P. 2d 240, held that it will consider error in refusing instructions even though they were not contained in a bill of exceptions. The court in this case differentiated between instructions given and instructions refused and held further that refused instructions are "matter deemed excepted to without a bill of exceptions".

In the light of this case it would seem that refused instructions should be included in the original judgment roll. As a practical matter these refused instructions would also be included in a bill of exceptions since any astute attorney would want to call his arguments to the attention of the court.

The only other information relating to the contents of a judgment roll is set forth in Section 93-5707, R.C.M., 1947, with which you are familiar. The office of the clerk of the supreme court has no information regarding the judgment roll in addition to the statutory provisions.

Very truly yours,
FORREST H. ANDERSON
Attorney General