

**County Clerk, Duties Of. Abstracts of Title by County Clerk,
Fees for Abstracting. Fees of County Clerk.**

1. It is the duty of the county clerk to make abstracts of title when the fees therefor are paid in advance, and such fees should be turned into the county treasury.

2. The county clerk cannot evade the duty of turning the fees in to the county treasury by making such abstracts and signing the same "Abstractor" instead of "County Clerk."

Helena, Montana, November 23d, 1906.

Hon. C C. Hurley, County Attorney, Glendive, Montana.

Dear Sir:—I am in receipt of your letter of November 15th, in which you submit two propositions, to-wit:

1. "Should the county clerk turn into the county treasurer the fees collected by him for making abstracts of title?"

2. "Can the county clerk make abstracts of title during office hours and certify to the name as Abstractor and retain the fees therefor?"

1. The provisions of Secs. 4420, 4421 and 4635 of the Pol. Code make it obligatory upon the county clerk to make abstracts title in the manner therein provided, and the fees received by him therefor should be turned into the county treasurer.

2. It is not the policy of the law that any official should use his official position for the purpose of private gain, and when the county clerk makes an abstract, as required by law, he cannot, by voluntarily changing his designation from "county clerk" to "abstractor" retain the fees therefor which properly belong to the county. As well might he claim that he could retain the fees for recording a deed on the theory that when he copied the deed into the record he did so as "copyist" and not as "county clerk" Making abstracts being one of the duties enjoined upon the county clerk by positive provisions of law, it is his official duty to make these abstracts, receive the fees therefor, and to pay the same into the county treasurer.

The facts upon which your questions are based are not stated in your letter, and my conclusions herein are only abstract propositions of law and are not intended to convey the idea that any county clerk has violated his duties.

Very truly yours,
ALBERT J. GALEN,
Attorney General.