

**Costs, Cities, Liability For in Court Actions. Exemptions,  
Cities From Court Costs. Filing Fees, Liability of Cities.**

1. A city or town is a subdivision of the State, and as such is entitled to its exemptions from the payment of fees and court costs as provided in Sections 4612 of the Political Code and 1874 of the Code of Civil Procedure.

2. A city or town, as such, is not exempt from the payment of such costs as it may incur in the prosecution of an action, but should not be required to pay same in advance.

Helena, Montana, Nov. 29, 1907.

Hon. James A. Murray,  
County Attorney, Silver Bow County,  
Butte, Montana.

Dear Sir:—

Your letter of the 13th inst. received. In answer to the question contained therein, to-wit:

“Is the City of Butte required to pay filing fees and court costs in actions begun in the district court.”

I advise you as follows:

Section 4612 of the Political Code provides as follows:

“Sec. 4612. No fees must be charged the state, or any county, or any subdivision thereof, or any public officer acting therefor, in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees.”

Also we find same in the Code of Civil Procedure, Sec. 1874, C. C. P., providing:

“Sec. 1874. The state or county, or any subdivision thereof, or any officer when prosecuting or defending an action on behalf

of the State or county, or subdivision thereof, is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action. No officer so prosecuting or defending shall be taxed with costs or damages, but such costs or damages, if any, shall be taxed to the state or county, as the case may be."

Now the question is presented, is the city a subdivision of the State or county and entitled to its exemptions as to fees? I am of the opinion that it is such a subdivision and should not be required to pay such fees in court actions. Our State Constitution recognizes a city or municipal corporation as a subdivision of the State.

"Neither the state nor any county, city, town, municipality, or other subdivision of the state, shall, etc."

Art. XIII, Sec. 1. Mont. Const.

Further, the Constitution, treating it as a subdivision of the State, places it to that extent under the control of the Legislature in connection with other subdivisions of the State which are thus controlled.

Art. XVI, Mont. Const.

The Legislature has also recognized it as part of the State, holding it to be a subdivision of the county.

Sec. 4720 et seq. Pol. Code.

Further, we find both the county and the city have power granted them to legislate, which authority comes alone from the legislature.

County, 4190 Pol. Code.

City, 4701, Pol. Code.

The boundaries of the one are by direct act, of the other by authority of the legislature. Hence we find that both derive authority and existence from the same source. It is conceded that a county brings actions in its own name, yet it is not charged fees. The city likewise brings actions in its own name, acting under the same source of authority.

Counties 4192, Pol. Code.

Cities 4703, Pol. Code.

In view of our constitution and laws, and the physical relationship of the city to the county and State, it is necessarily a subdivision of the State, and entitled to all the benefits as such.

However, such costs as are not fees, and are incurred by the city in the prosecution of an action, should be paid by the city. They should not be required, however, to be paid in advance.

State ex rel. Donovan vs. Ledwidge, 27 Mont. 197.

Very truly yours,

ALBERT J. GALEN,

Attorney General