

Fees, of County Clerk for Certificate. Fees, of County Clerk for Endorsement on Filing Papers. County Clerk, Fees of for Certificate and Endorsement on Filing Papers.

Where the County Clerk issues a certificate certifying that a certain paper has been filed in his office, he should affix his seal to such certificate and charge fifty cents for the certificate. On the other hand, he is not required to affix his seal to the endorsement made at the time of filing a paper in his office, and if he does affix his seal thereto he is not authorized to charge for the same.

Helena, Montana, May 26, 1909.

Board of County Commissioners,
Silver Bow County,
Butte, Montana.

Gentlemen:

We are in receipt of a letter from your county clerk, requesting an opinion on the following question:

"Would like to get an opinion from you in regard to county clerks certifying to instruments without their seals. In other words can a county clerk certify to an instrument without putting the impress of his seal on the instrument."

From the above question we are not able to understand just what character of certificate is required. Under Section 3168, Revised Codes, the clerk, in issuing a certificate showing that an instrument has been filed and recorded, or filed, should affix his seal to the certificate and charge a fee of fifty cents, which is the total charge for a certificate and the seal attached; that is to say, if a party desires a certificate from the county clerk to the effect that a certain instrument has been filed and recorded, or filed in his office, he is entitled to receive fifty cents therefor, and should attach his seal to such certificate. On the other hand, if the certificate referred to in the question submitted is the endorsement placed by the clerk upon an instrument at the time of filing the same for record, then you are advised that the law does not require the seal to be affixed to such instrument, as Section 3039 merely provides that,

"When any instrument, paper or notice authorized by law to be recorded is deposited in the office of the County Clerk as ex-officio recorder, he must endorse upon the same the time it was received, noting the year, month, day, hour and minute of its reception," etc.

Nothing in this section requires the affixing of the seal on such instrument; and, therefore, the clerk is not required to put his seal on such instrument, and if he does so for his own protection, he could not charge a fee for affixing the seal. For instance, when a deed is presented for record Section 3168 fixes the fee for recording and filing such deed as follows:

"For the first folio, thirty cents.

For each subsequent folio or fraction thereof, fifteen cents.

For each entry in index, ten cents."

That is the total fee allowed for filing and recording such instrument, and the endorsement placed by the clerk thereon, pursuant to Section 3039, is a mere incident of such filing and recording. Such in effect was the holding by Attorney General Nolan in an opinion given to H. C. Cockrill, county attorney of Gallatin County on April 28, 1897, and we concur with his construction of the law. And, of course, where a chattel mortgage is presented for filing the fee is one dollar, and that fee includes the endorsement required under Section 3039, and no extra charge can be made where the clerk sees fit to affix his seal to such instrument.

Yours very truly,

ALBERT J. GALEN,

Attorney General.