

**Commission of Adjutant General, Right of Secretary of State to Charge Fee for Issuance of. Secretary of State, No Legal Right to Charge Fee for Issuance of Commission to Adjutant General. Fees of Secretary of State, Military Commissions Excepted.**

Under the provisions of Section 1065, Revised Codes of Montana, and Subdivision XIV of Section 165 of the same code. The Adjutant General being a Military Officer, the Secretary of State has no legal right to charge a fee for the issuance to him of his commission.

Helena, Montana, June 1, 1909.

General Phil. Greenan,  
Adjutant General,  
Helena, Montana.

Dear Sir:

I am in receipt of your favor of the 14 ultimo, requesting official opinion from this office upon the question of whether or not the Secretary of State has a legal right to charge you the sum of five (\$5.00) dollars as a fee for the issuance to you of your commission as Adjutant General of the State, you being a military officer and exercising command.

From the statements contained in your letter it appears that you were appointed to the office of Adjutant General of the State of Montana by the Governor on March 4th of this year, and that, when your commission was issued, you were charged the sum of five dollars as a fee for the issuance thereof by the Secretary of State.

Section 1065 of the Revised Codes of Montana of 1907 provides that:

"The Governor shall issue a commission to all officers elected or appointed, which election or appointment shall be approved by him. Every commission shall be countersigned by the Secretary of State. \* \* \*"

Sub-division XIV of Sec. 165 of the Revised Codes of Montana of 1907—which section has reference to the fees which must be charged by the Secretary of State for services performed in his office—provides that:

"For each commission or other document, signed by the Governor and attested by the Secretary of State (Pardon and Military Commissions excepted,) Five Dollars."

The question then arises "Is the commission that is issued to the Adjutant General a Military Commission?"

The definition of the term "Adjutant General," as contained in Webster's Dictionary is as follows:

"The officer who is the principal assistant to the commander of an army, or of a military department, or the like, in publishing orders, conducting correspondence, and regulating the details of the service. In the United States he is the Chief of a Bureau in the War Department, and in actual service in the field he establishes camp, forms lines of battle, etc."

The definition of the said term "Adjutant General" as contained in the Encyclopedia Americana is as follows:

"An officer on the staff of the Commander in Chief as secretary and principal assistant in issuing orders and supervising their execution, making reports and keeping registers, etc.; and having charge of the drill and discipline of an army. In the United States he ranks as Major-General and is a leading officer in the War Department; he has charge of the recruiting service, collection of military information and preparing annual militia returns. Most of the states have an Adjutant General, similarly related to their militia."

From a consideration of the above it will be seen that; first, he must be an officer; and, second, in order to be an officer in the military service, he must have had a military commission issued to him; and third, he must be an officer of high rank.

The laws of this state prescribes that "The Adjutant General shall have the rank of Brigadier General," thus giving him the highest military rank in the military forces of the State. As Adjutant General he issues all the commands of the Governor to the troops and is the representative of the Commander in Chief at all times. As such he issues such orders and directions from time to time as he may think necessary for the proper discipline of the troops.

You are therefore advised that the Adjutant General is a Military Officer within the meaning of the provisions of Section 1665 of the Revised Codes of Montana, and that, under the provisions of Sub-division IV, above quoted, the Secretary of State had no legal right to charge any fee for the issuance to you of your commission as Adjutant General.

Very truly yours,

ALBERT J. GALEN.

Attorney General.