

**Fees, of Clerk of Court. Municipal Corporations, Filing Fees of. Fees, Not to Be Paid by Municipal Corporations.**

A city or county, or any officer acting in behalf thereof, should not be charged fees for filing pleadings in the office of the clerk of the district court.

Helena, Montana, December 9, 1909.

Board of County Commissioners,  
Lewis and Clark County,  
Helena, Montana.

Gentlemen:—

I am in receipt of your letter of December 8, making inquiry as to whether or not the city of Helena should pay fees for recording instruments filed by it.

An answer to this question resolves itself into an interpretation and application of section 3145, revised codes, which provides that no fees must be charged the state, or any county, or any subdivision thereof, or any public officer acting therefor, and that all such services must be performed without the payment of fees.

The only question involved in this query, is whether or not a municipal corporation—that is, a city or town—is a subdivision of the state.

In my opinion this query must be answered in the affirmative.

Section 40, revised codes, treats of the different political divisions of the state, and enumerates counties, senatorial and representative districts, congressional district and judicial districts.

Under the provisions of section 40, above referred to, the state is divided into counties, as declared in Part IV, of the same code, which begins at section 2781, and the term "county" is defined by that section as being "the largest political division of the state having corporate power."

Part IV., of the revised codes, treats, in title I., the subject "counties;" in title II., "the government of counties;" in title III., "the government of cities."

Judge Dillon, in his work on municipal corporations, (speaking of cities and towns) uses the following language:

"Municipal corporations are instrumentalities of the state for the convenient administration of government within their limits."

A municipal corporation, as defined in the *Cyclopedia of Law and Procedure*, "is a legal institution formed by charter from a sovereign power erecting a populous community of prescribed area into a body politic and corporate \* \* \* with authority for local administration of affairs of state."

In *Coyle v. McIntyre*, 30 Atl. 722, the court defines a city or municipal government as follows:

"A body politic and corporate, established by law, to assist in the civil government of the state."

And in *People v. Coler*, 166 N. Y. 1, the supreme court of New York described a municipality as:

"An agency of the state to discharge some of the functions of government."

In *Barnes v. District of Columbia* it is held that:

"A municipal corporation in the exercise of its duties is a department of state."

See also

*Tippecanoe County v. Lucas*, 93 U. S. 108.

*Cooper v. Emory*, 14 Me. 375.

*Camden v. Camden Village*, 77 Me. 530.

*City of Seattle v. Stirratt*, 104 Pac. (Wash.) 834.

From the above excerpts, it can be seen that a city government or municipality is a body politic. It is fundamental that a body politic could not exist within the state of Montana, except in subservience and subordinate to the parent political organization; namely, the government of the state itself. It seems, therefore, to be clear that any body politic, or political organization, in the economic sense of the word, must be a subdivision of the state government, and must necessarily derive its power and authority from legislative enactment. In fact, section 3259, revised codes, together with acts amendatory thereof and supplemental thereto, define, confer and limit the powers, and the only power, which may be exercised by a municipality, acting through its officers. Being a creature of the state, but continuing its existence under the will and pleasure of the sovereign authority, a municipal corporation possesses such powers only as the state confers upon it, either in express terms, by necessary implication or those that are essential and necessary to carry out the objects of its organization. For example: Municipalities are ordinarily granted the power of eminent domain, the power of establishing and taxing for special improvements, and quite general police power, and the power of taxation within the limits prescribed by the constitution and statutes of the state. In fact, section 5, article XII., of the constitution of the state of Montana provides that:

"Taxes for city, town and school purposes may be levied on

all subjects and objects of taxation, but the assessed valuation of any property shall not exceed the valuation of the same property for state and county purposes."

Section 6, of the same article, provides:

"No county, city, town or other municipal corporation, the inhabitants thereof nor the property therein, shall be released or discharged from their or its proportionate share of state taxes."

Counties are organized in this jurisdiction by special acts of the legislature. The organization and incorporation of cities is effected under a general law. But this general law, in each particular instance, has the same force and effect as a special act of the legislature granting a municipal charter to those communities which take advantage of it.

In view of the considerations herein set out, it is my opinion that the provisions of section 3145, revised codes, extend to cities, and public officers acting in their behalf, as well as to counties, townships, schools districts, and their respective officials.

You are therefore advised that, in my opinion, it is proper to file and record any instruments for which the city of Helena would be liable to paying the filing or recording fee without charge on the part of the county clerk and recorder.

In an opinion, addressed to Honorable W. H. Trippet, county attorney of Deer Lodge county, dated December 1, 1909, I expressed the opinion that the clerk of the court should collect from the city of Anaconda the regular fee for filing papers in actions commenced or pending in his court. In view of this further consideration of this subject, and a more exhaustive examination of the authorities, I am inclined to modify my opinion concerning the general subject of the liability of cities for fees to conform with the opinion herein expressed.

Very truly yours,

ALBERT J. GALEN,

Attorney General.