

County Clerk, Fees of. Representation, Affidavit of Annual Mining Claims, Affidavit of Annual Representation of. Same, see Section 2614, Political Code 1895. Political Code 1895, Section 3614 Erroneously Omitted From Revised Codes.

The county clerk should file and record an affidavit of annual representation on mining claims. The fee therefor is \$1.00.

Section 3614, Political Code of 1895, should have been incorporated in the Revised Codes of 1907, and is still in effect.

Helena, Montana, January 21, 1910.

Hon. D. M. Kelly,
County Attorney,
Boulder, Montana.

Dear Sir:—

I am in receipt of your letter of January 20, wherein you ask my opinion on the following questions:

First: Should the county clerk simply file an affidavit of annual representation of a mining claim, or should he record it?

Second: Section 3614, of the political code of Montana of 1895, not being incorporated in the revised codes of 1907, is said section 3614 still in effect?

I will answer your last question first.

Section 3614, political code (1895) is still in full force and effect and is the law of the state of Montana concerning the making and filing of annual representation of mining claims. Chapter I, title IX., part III., of the political code of 1895, being sections 3610, et seq., was amended by chapter 16, session laws of 1907. This chapter governs

"The manner of locating, recording and holding possession of mining claims upon the public domain of the United States within the state of Montana."

You will notice that sections 3610, 3611, 3612 and 3615 of the chapter and title above referred to are specifically repealed by section 13, of chapter 16, laws of 1907. You will also notice that chapter 16 contains no reference whatever to the matter of making or filing affidavits of annual representation of mining claims. In addition to the specific repealing clause, there is a general repeal of all acts and parts of acts in conflict with chapter 16. But the matters contained in section 3614, not being touched upon at all by chapter 16, laws of 1907, that section is not in conflict with any of the provisions of the 1907 law, and not being specifically mentioned in the repealing clause is still a law of this state.

In answer to your first question, as suggested by you, section 3614, political code of 1895, provides that the owner of a mining claim may "file * * * an affidavit of annual representation."

Section 3168, revised codes, provides that the fees of the county clerk

"For filing, recording and indexing each affidavit of annual labor on mining claim, for each claim named therein," shall be \$1.00.

Section 3032, revised codes, makes it the duty of the county clerk

"Upon the payment of his fees for the same, record separately, in large and well bound separate books, in a fair hand (Subdiv. 11) affidavits of annual work done on mining claims."

This section seems to make it the duty of the county clerk not only to file the affidavit of annual representation, but to record the same, and his fee is fixed by section 3168, revised codes, at \$1.00.

Section 3614, of the political code of 1895, was evidently omitted from the revised codes through inadvertence, and, in our opinion, should have been included therein as part of the living law of the state of Montana.

Very truly yours,

ALBERT J. GALEN,

Attorney General.