

Fees of Clerks of District Court.

No fee to be collected for filing transcript of judgment docket from another county, specified in Section 6810, Revised Codes of 1907.

Oct. 8, 1910.

Mr. C. E. Kumpe,
State Examiner,
Helena, Mont.

Dear Sir:— —

I am in receipt of your letter of September 20th asking for an opinion from this office in reference to fees of the clerk of the district court for filing and docketing a transcript of the original docket from another county.

Section 6810 of the Revised Codes of 1907 provides that a transcript of the original docket certified by the clerk may be filed with the district court of any other county, etc. Upon examination of Section 3169 relating to fees of clerk of district court, I am unable to find any provision for collection of fee by the clerk with reference to transcript of the original docket mentioned in the above Section 6810.

It is true that Sub-division 14 of Section 3169 provides for filing and docketing transcript of judgment and issuing execution thereon, that the clerk should collect a fee of \$2.50. This in my opinion, however, does not refer or relate to the transcript of the original docket mentioned in 6810 but refers solely to the filing and docketing of a transcript of judgment from a justice court within the county.

There being no fee then specified to be collected by the clerk of a

district court, it is my opinion that no fee can be collected for the filing of the transcript mentioned in Section 6810.

This opinion is, I believe, fortified by the decisions of the State of Pennsylvania and Nebraska under similar statute to ours. Section 1415 of the Nebraska Code is identical with Section 6810 of the Revised Codes of 1907 of Montana, with the exception that in addition to the provisions of our Code the Nebraska Code provides:

“And execution may be issued on the judgment obtained by such transcript as on the original judgment.”

The Pennsylvania statute is identical with the Nebraska statute.

The transcript when filed in the district court of another county is not a judgment in that county for all purposes, but is a quasi-judgment for certain limited purposes—such for instance, as the creation of lien on real estate situated within the county where the transcript is filed, but in case of the issuance of an execution, this in my opinion must be issued in the county where the original judgment was rendered.

See 23 Cyc. 857;

Pemberton vs. Pollard, 18 Nebr. 435;

Morris vs. Pavcke, 44 Nebr. 412.

It may not seem reasonable that the clerk of the district court may be called upon to perform any duties without the payment of a fee, but he is entitled to only such fees as are enumerated in Sec. 3169 of the Revised Codes of 1907, and there being no provision in that section for the filing of transcript mentioned in Sec. 6810, no fee can be required.

Yours very truly,

ALBERT J. GALEN,

Attorney General