

Marriage License, Fee For. Fees, for Obtaining Marriage License. Clerk of the District Court, Duty to Issue Marriage License.

There being no express provision in the laws of this state providing for or requiring any fee to be paid to the clerk of the district court, or to the county clerk, for issuing a marriage license, no fee for that purpose can be collected or charged.

Under the laws of this state it is the duty of the clerk of the district court to issue a marriage license without any charge for issuing or recording the same.

April 22, 1911.

Hon. C. E. Kumpe,
State Examiner,

Dear Sir:

I am in receipt of your letter of April 13th, enclosing a communication from Mr. R. L. Kelley, clerk of the district court of Powell county, Montana, requesting my opinion as to what fee, if any, is now prescribed by the statutes of the state of Montana for the issuance of a marriage license.

Section 3168 of the Revised Codes of 1907, which act was approved March 18th, 1895, required the county clerk to collect \$2.00 for issuing a marriage license and for recording certificate thereof on return, including indexing, all to be paid at the time of issuing the license.

By the provisions of Section 3618 of the Revised Codes of 1907, which act was approved March 14th, 1895, previous to the solemnization of any marriage in this state a license for that purpose must be obtained from the clerk of the district court of the county wherein the marriage was to take place. Previous to the enactment of said Section 3618, before a marriage could be solemnized in this state, a license for that purpose was required to be obtained from the clerk of the county wherein the marriage was to take place, and the county clerk was entitled to charge a prescribed fee therefor. The legislative assembly of 1895 saw fit to amend and did amend what was known as Section 42 of the Civil Code of the Reported Code Commission of the state of Montana, so as to read as Section 3618 above mentioned. But the legislature in transferring the duty of issuing marriage licenses from the county clerk to the clerk of the district court did not transfer the fee theretofore required to be collected by the county clerk, and for that reason it cannot be presumed that the legislature intended for the clerk of the district court to collect any fee for this service. As to whether or not the county clerk was still required to collect the fee although the duty of issuing the license was transferred to the clerk of the district court, is not necessary for me to pass upon at this time for the reason that the twelfth legislative assembly of the state of Montana by the provisions of Chapter 117 thereof amended Section 3168

above referred to by omitting therefrom any fee to be collected by the county clerk for issuing or recording a marriage license. This being the fact, there is now no provision in the laws of our state providing for or requiring any fee to be paid to the county clerk or to the clerk of the district court for issuing a marriage license.

You are, therefore, advised that while it is the duty of the clerk of the district court to issue a marriage license under the provisions of Section 3618, Revised Codes, he is not entitled to charge or receive any fee therefor.

Yours very truly,

ALBERT J. GALEN,

Attorney General.

P. S.—I herewith return letter as requested.