

Fees, Of Clerk of the District Court for Making, Acknowledging and Procuring Signature of Judge to Deed of Lot in Townsite. Clerk of District Court, Fees Of in Making, Acknowledging and Procuring Signature of Judge to Deed of Lot in Townsite.

The Clerk of the District Court is not entitled to any fee for making, acknowledging or procuring the signature of the Judge to such deed in cases where a referee is appointed to take proofs of claimants under the provisions of Section 3541, Revised Codes of Montana, nor is the Clerk required to make, acknowledge or procure the signature of the judge to such deed, but this service must be performed by the referee appointed by the judge.

December 2, 1910.

Hon. C. E. Kumpe,
State Examiner,
Helena, Montana.

Dear Sir:

Your letter of December 1st has been received enclosing a communication from Mr. Thos. P. Conlon, clerk of the district court of Missoula county, requesting an opinion of this office as to whether or not the clerk of the district court is entitled the fee of \$4.00 for making, acknowledging, and procuring the signature of the judge to a deed of a lot in a townsite, under the provisions of Section 3169 of the Revised Codes, when the deed has been prepared by a referee ap-

pointed under the provisions of Section 3541 of the Revised Codes.

In reply, I will say, it is my opinion that the clerk is not entitled to any fee for making, acknowledging or procuring the signature of the Judge to such deed in cases where a referee is appointed to take proofs of the claims of claimants under the provisions of Section 3541, for the reason that it becomes the duty of such referee to prepare all such deeds and the duty of the district judge to examine the proofs and execute the deeds to the claimant or claimants, for which service the referee is entitled to a fee of \$5.00, where there is no contest, but where there is a contest he is entitled to a fee of \$10.00 for each lot or lots.

The only case in which the referee is appointed is where someone claims a lot or lots in any townsite preempted under the provisions of this chapter, and it is made the duty of the district judge at chambers to appoint some suitable person who is a notary public to hear and take in writing any and all proof of such claim and to prepare all deeds to such lot or lots so claimed or proven and report the same to the district judge. If there are no claimants for any of the lot or lots the clerical work under the chapter in question must be performed by the clerk of the district court, and in that instance the clerk of the district court would be entitled to the fee of \$4.00 provided for in Section 3169 for making, acknowledging and procuring the signature of the judge to the deed; but where this service is required to be performed by a referee appointed by the judge the clerk is not entitled to make the \$4.00 charge nor is he required to perform the service contemplated by Section 3169.

Yours very truly,

ALBERT J. GALEN,

Attorney General.