

New Counties, Fees for Transferring Actions To. Fees, Of Clerk of Court for Transferring Actions From Old to New County.

Under the provisions of Sec. 12, Chapter 112, Laws of 1911, any party to an action mentioned in the section may have the action transferred from the old county to the district court to which the new county is attached for judicial purposes and the clerk of the old county is to charge and collect 20c per folio for copies of minutes made by him and 50c for certificate fee, and the clerk of the new county shall not be entitled to any fee for the filing of such transfer of records, but for the filing of any papers that may be filed thereafter in connection with such action or proceeding he shall be entitled to charge the same fees as are prescribed by law.

March 20, 1912.

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

Dear Sir:

I am in receipt of your letters of the 28th of February and the 16th of March requesting my official opinion as to whether or not under the provisions of Sec. 12, Chapter 118, Session Laws of 1911, the clerk of the district court is entitled to charge a fee for transferring the pleadings in actions, and a fee for filing the papers anew in the county to which they are transferred.

Sec. 12, above referred to, reads as follows:

"All actions pending in the district court of the old county or counties for the recovery of the possession of, quieting the title to or for the enforcement of liens upon, or any other actions affecting real estate lying in the new county shall on motion of any party thereto be transferred to the district court to which the new county may be attached for judicial purposes, and thereafter shall be subject to the same laws as if said action had been originally brought in the district court of the new county. * * * * "

This section does not specifically state whether a fee is to be charged or not, but it gives any party to the action the right to have it transferred to the district court to which the new county is attached for judicial purposes. The county in which the action was originally commenced is presumed to have been the proper county and the court of this county has jurisdiction to hear and finally determine the action. However, as a matter of convenience if any party to the action so desires, he may have the action transferred to the new county.

Sec. 2867, Revised Codes, gives practically the same right of transfer as provided in section 12 of the act above referred to with reference to transferring actions affecting real property situated within a new county; and Sec. 2869 of the Revised Codes, provides that the clerk of the district court wherein such action or proceeding was originally begun shall be entitled to receive, for transferring such files and papers and certified copy of the minutes and records entered in connection with such action or proceeding, no other fee than at the rate of twenty (20) cents per folio for copies of minutes made by him, and fifty (50) cents for certificate fee; that the clerk of the district court of the new county, to which such files and papers may be transferred in accordance with the provisions of this act, shall not be entitled to any fees for the filing of such transferred records, but for the filing of any papers that may be filed thereafter in connection with such action or proceeding, or for the issuance of any writs or other papers, such clerk shall be entitled to charge the same fees as now provided by law.

You are, therefore, advised that the fees as prescribed by Sec. 2869, above referred to, are the only fees the clerk of either county is entitled to collect upon transfer of actions above referred to; and

that the fees so prescribed for transferring papers should be paid by the party at whose instance the transfer is made.

Yours very truly,

ALBERT J. GALEN,

Attorney General.