

Fees, of County Clerk for Comparing Transcribed Records for New County. Transcribed Records, Fees of County Clerk for Comparing.

Sec. 2864, Revised Codes, provides that a fee of six dollars per day shall be allowed the county clerk for comparing the transcribed records for a newly created county. Such fees, however, are due from the new county to the old county, and not to the county clerk thereof.

January 30th, 1913.

Hon. Thomas Downen,
Chairman County Commissioners,
Chinook, Montana.

Gentlemen:

I am in receipt of your letter of the 26th inst., making inquiry as to the compensation which should be paid to the county clerk of Chouteau County for comparing records required to be transcribed by the newly created County of Blaine. Sec. 11 of Chap. 112, Session Laws of 1911, relating to the creation of new counties, confers authority upon the board of county commissioners of the new county to contract for the transcribing of records of the old county in so far as such records relate to the new county, but this section does not fix the compensation. Sec. 2861, et seq., Revised Codes of 1907, deals specifically with this subject and both the laws as it is found in the statute and that found in Sec. 11 of said Chap. 112, confers upon the board of county commissioners of the new county full authority to have the transcribing done, but after it is finished and the work of transcribing is approved by the county commissioners of the new

county, it is necessary before they can be certified to as correct by the county clerk of the old county that he compare the transcribed record with the original record. For this service of transcribing, a fee of six dollars per day is allowed for the time actually spent in such comparing. This is the full amount to be charged the new county for comparing records (Sec. 2864), but the law does not fix the number of days which may be consumed by the clerk in making the comparison. This seems to be wholly a question of fact to be settled as every question of fact is settled. In case of a dispute the question would be "What is a reasonable time under the circumstances?" This fee of six dollars per day properly belongs to the old county, not to the clerk thereof, and hence in determining the amount which is due from your county to the county clerk of Chouteau County, or rather to the County of Chouteau for comparing records, you will first ascertain the number of days spent in such comparison, and then allow six dollars per day in accordance with the provisions of Sec. 2864.

This, however, relates only to comparing the transcribed records, and not to the transcription itself, for that is accomplished by agreement between the board of county commissioners and the new county and the party to whom they award the work of transcribing. I inclose herewith a copy of an opinion which was rendered to Hon. H. S. McGinley, county attorney of Choteau County, in which it is held that this per diem received for comparing the transcribed records of a new county should be accounted for and paid into the county treasury of the old county and not retained by the clerk thereof.

Very truly yours,

D. M. KELLY,
Attorney General.