

Fees of, Clerk of District Court. Clerk of District Court,
Fees of for Certifying Papers. Copies, No Charges for When
Made by Parties. Certification of Transcript, Fee for.

The clerk of the district court cannot properly charge for making copies where the same have been furnished by the parties. His fee for certifying however, remains the same.

March 26th, 1913.

Hon. Vard Smith,
County Attorney,
Livingston, Montana.

Dear Sir:

I am in receipt of your letter of the 22nd instant, requesting an opinion from this office upon the following question:

"What fee is the clerk of the district court entitled to receive on certifying copies of papers in a case which is removed to the District Court of the United States, where the papers are prepared by the party removing, and the clerk merely compares them and certifies to the correctness thereof?"

I also note your consideration of the question and the conclusion at which you arrive, namely, that the clerk in this instance is entitled to receive a fee of \$2.50, but is not entitled to the fee of 10 cents per folio.

After a careful examination of Sec. 3169, R. C., it is my opinion that your reasoning in this matter is good and that your conclusion is correct. The statute, in providing for the fee of the clerk for preparing and certifying transcripts on appeal, differentiates between preparing the transcript and certifying the same after it is prepared. It clearly appears to have been the intention to provide for a certain fee for the transmission of records and files when the case is transferred or appealed, and to provide a different fee, to-wit: 10 cents per folio for preparing such records for transmission. Where the record is prepared for transmission, the clerk may certify to its correctness and transmit the same and properly charge and collect the fee provided for such service, namely, \$2.50. I do not think that the clerk is entitled to charge a fee for preparing the record for transmission when in fact he does not prepare the same. The subdivisions which differentiate between the certifying and transmission of transcripts on appeal and the preparing thereof, clearly make it the duty of the clerk to compare the transcript when it is prepared by the moving party, and his fee for the comparing and certifying is \$5.00. The subdivision which provides for the fee of \$2.50 for transmitting the record to another court (not on appeal) does not expressly require the clerk to compare a transcript prepared by the moving party. While I conclude that the clerk cannot charge 10 cents per folio for preparing the transcript, which he does not prepare, yet I do not hold that the clerk may be required to compare such a transcript not prepared by him, and for which comparing there is no fee provided. It may be that the clerk may insist upon being allowed himself to prepare such transcript and thereby become entitled to charge the additional fee of 10 cents per folio. This situation does not appear to exist in the statement of facts, about which you request an opinion, and therefore I express no opinion at this time upon this question.

Where, however, the transcript is prepared by the moving party and the clerk is willing to compare such transcript and certify the same without insisting upon preparing the same himself, then in my opinion he is entitled to make the charge of \$2.50 only. This conclusion is fortified by the provisions of Sec. 7199.

Very truly yours,

D. M. KELLY,
Attorney General