

**Filing Fees—Clerk of the District Court.—Appeal from Police Court.**

In all cases of appeals from a police to a District Court which are of a civil nature the appellant should pay the filing fee of Five Dollars when the papers are presented for filing.

August 7, 1917.

Mr. R. N. Eaton,  
Clerk of the District Court,  
Kalispell, Montana.

Dear Sir:

I have your letter of the 31st ult. submitting for my opinion the following question:

"Is a case which is appealed from the City Police Court to the District Court subject to a filing fee of Five Dollars when the papers are presented for filing in the District Court?"

Sections 7154 and 7155, Revised Codes 1907, so far as material here, provides that "costs are allowed of course to the prevailing party in the following cases:"

"\* \* \* (5) In an action which involves the title or possession or right of possession of real estate, or the legality of any tax, impost, assessment, toll, or *municipal fine*, or quo warranto proceedings."

These sections are applicable to civil cases only.

Our Supreme Court has held that prosecutions conducted in the name of a municipality for violation of its ordinances, are in their nature civil and not criminal actions, and that any infractions of local police regulations are not in their essence crimes or misdemeanors, as those terms are employed in our criminal jurisprudence, and that prosecutions therefor of them are not criminal prosecutions.

City of Helena vs Kent, 32 Montana 279, 80 Pac. 258.

State ex rel City of Butte vs District Court, 37 Montana, 202, 95 Pac. 841.

State ex rel Streit vs Justice Court, 45, Montana 375, 123 Pac. 405.

Proceedings instituted for the violation of municipal ordinances being civil in nature, it is therefore my opinion that on all appeals to the District Court in such cases the appellant should pay the fees as provided for in civil actions and that such appeals should be allowed and perfected under the provisions of the statute allowing appeals in civil cases before a Justice of the Peace.

Respectfully,

S. C. FORD,  
Attorney General