

**County Clerk and Recorder—Fees of—Comparing Records, Fees For.**

The county clerk and recorder of Custer County is entitled to six dollars a day for comparing Carter County Records and an additional six dollars a day for each deputy so employed.

September 27th, 1917.

Robert Yokley,  
Chairman Board Co. Com.,  
Miles City, Mont.

Dear Sir:

I am in receipt of your letter of recent date enclosing opinion of the County Attorney of Custer County given to the board in reply to certain questions submitted to him, and which questions were as follows:

- A. Does County Clerk of Custer County receive \$5.00 or \$6.00 a day for comparing Carter County Records when General Law says \$6.00 and Carter County Law says County Clerk of Fallon County receives \$5.00?
- B. Does fee apply to as many deputies as employed?
- C. Does fee thus collected belong to County?

The act creating Carter County, (Chap. 56, Laws 1917), provides the fee to be paid the County Clerk of Fallon County for comparing and certifying to records transcribed from Fallon County but is silent regarding fee to be paid to the Clerk of Custer County for comparing and certifying records transcribed from Custer County, and the present new County Law (Chap. 139, Laws 1915), is also silent regarding fees to be paid to County Clerks for comparing and certifying transcribed records. Section 2864, Rev. Codes, provides that the County Clerk shall receive \$6.00 per day for comparing and certifying to transcribed records, and, in the absence of any provision in the Carter County act fixing the fee to be paid the County Clerk of Custer County for such services, the provisions of Section 2864, Rev. Codes control, and the County Attorney was therefore correct in advising you that the County Clerk of Custer County was entitled to receive \$6.00 per day for comparing and certifying to records of Custer County transcribed for Carter County.

I am of the opinion that the answer given by the County Attorney to your second question was incorrect, and that the County Clerk is entitled to receive a fee of \$6.00 per day for each deputy employed in comparing such records. If one deputy should be employed for 30 days in such comparing the clerk would be entitled to receive \$180 in fees. If, instead of one deputy working 30 days, 6 deputies should complete the work in 5 days, making a total of 30 days' work performed by the 6 deputies it would be no more than reasonable to allow the clerk to receive the same fees as he would have received if the work had been performed by one deputy in 30 days. While it is not entirely clear, from the language used in Section 2864, that such was

the intention of the legislature, yet this would seem to be only a reasonable construction to place thereon. However, I concur with the County Attorney in the opinion that, in order to avoid any controversy, it would be advisable for the County Commissioners of the two counties to agree or stipulate that this work should be done in such manner as seems business-like and practicable.

Answering your third question, as stated by the County Attorney, this office has already passed on the question of whether the fees collected belong to the clerk or the county, holding that such fees belong to the county and not to the clerk and must be accounted for in the same manner as other fees collected by the clerk.

Vol. 5 Op. Atty. Gen. Pg. 14;

Vol. 6 Op. Atty. Gen. Pg. 291;

Truly yours,

S. C. FORD,

Attorney General