

Fees—New Counties, On Transferring Action To, Payment Of.

When an action is transferred to a new county, not affecting title to real estate therein, the clerk of the court may demand, under the provisions of 6508, Codes of 1907, a fee of \$5.00 therefor.

Oct. 16th, 1919.

Mr. Wm. L. Bullock,
County Attorney,
Conrad, Montana.

Dear Sir:

I am in receipt of your letter of recent date requesting that I advise you whether or not the clerk of the district court shall collect a fee of \$5.00 for filing actions transferred to Pondera County, when such action does not affect real estate.

Section 13 of Chapter 22, Session Laws 1919, by which act Pondera County was created, provides, first, that all actions pending in the district court of the old county or counties for the recovery of the possession of, quieting title to, or for the enforcement of liens upon, or affecting real estate lying in Pondera County shall on motion of any party thereto, be transferred to the district court of Pondera County; and, second, that all other actions or special proceedings in the district court of the old county or counties, on motion of any party interested therein, shall be transferred to the district court of Pondera County. No provision is contained in this section with reference to payment of filing fees in either class of cases referred to.

Section 2867, Revised Codes 1907, provides that when a new county is created any action or proceeding begun in an old county, affecting any real property situated in the new county, upon written motion by any party interested in the real estate or affected by the action or proceeding, shall be transferred to the old county, but there is no provision in this section for the transfer of actions or proceedings other than those affecting real property. Section 2869 then specifies the fees to be paid on the transfer of an action or proceeding which may be transferred under Section 2867, the clerk of the court wherein the action or proceeding was instituted being entitled to certain fees, while the clerk of the court of the new county is not entitled to any fee whatever. However this section clearly refers to only those actions or proceedings which Section 2867 authorizes to be transferred, actions and proceedings affecting real estate, and has no application to any other actions or proceedings.

Section 6508, Revised Codes 1907, provides that when an order is made transferring an action, the costs and fees thereof and of filing the papers anew must be paid by the party at whose instance the order was made.

Unquestionably when any action or proceeding is transferred to Pondera County under Section 13 of said Chapter 22, Laws of 1919, and such action affects real property, the county clerk of Pondera County is not entitled to receive a fee for filing the same in his court, but I am of the

opinion that if, under said section, an action which does not affect real estate is transferred, the clerk is entitled to receive a fee of \$5.00 for filing such action, under said Section 6508.

Respectfully,

S. C. FORD,

Attorney General.