

**Highways, Right of Way Across State Lands, Fee for—
State Lands, Right of Way Over, Fee for—Right of Way
Over State Lands, Fee for.**

The State Board of Land Commissioners are without authority to charge a county a fee of three dollars for a right of way for a highway over state lands.

October 4, 1920.

Mr. H. F. Miller,
County Attorney,
Fort Benton, Mont.

Dear Sir:

I have your letter of September 24th, in which you call my attention to the fact that your county in the past has been called upon by the State Land Board to pay a \$3.00 fee as a charge for obtaining a right of way across state lands to be used as a highway by your county in common with the general public.

I am glad you have called my attention to this fact, as I do not believe that it is warranted by law and should not be practiced in the future.

Section 3145 of the Revised Codes provides as follows:

"No fees must be charged the state, or any county, or any subdivision thereof, or any public officer acting therefor, or any habeas corpus proceeding for official services rendered, and all such services must be performed without the payment of fees."

In 1909 the legislature passed what is known as Chapter 147, in which provision was made for the management and control of state owned lands. In Section 32 of said act provision was made for the granting of a right of way over any of the lands of the state "to any county or city desiring to construct a public highway across the same; * * * provided, that a duly attested and sworn copy of the official plat, in duplicate, made by the official county or city surveyor or engineer, shall first be filed with the board," etc.

By Section 33 provision was made for the pranting of right of way across such state land for any "ditch, reservoir, railroad, private road, telegraph or telephone line, or for any other public use, as defined in the Code of Civil Procedure."

By Section 6 certain fees were established which it was made the duty of the State Land Commission to charge in connection with the conducting of their office. Among other things, the section provides that a \$3.00 filing fee shall be charged for the filing of a "deed for right of way, easements," etc.

Construing these various statutory provisions, I am of the opinion that it was not the intention of the legislature that any political subdivision of the state or a public officer should be charged any fees by the State Board of Land Commissioners. Section 3145 was enacted prior to the enactment of Chapter 147, Laws of 1909. Neither expressly nor by necessary implication did Chapter 147 repeal any of the provisions of Section 3145 of the Revised Code. These two statutes are therefore operative today and both may be enforced without conflict. Our Supreme Court, in the case of State ex rel. Metcalf vs. Wileman, 49 Mont. 436, 143 Pac. 565, strongly states the proposition of law to the effect that repeals by implication are not favored. It says: "Between the two acts there must be plain, unavoidable and irreconcilable repugnancy, and even then the old law is repealed by implication only by pro tanto to the extent of the repugnancy. If both acts can, by any reasonable construction, be construed together both will be sustained." In this case we have a situation where both statutes may stand together and operate without conflict. The section of the Revised Code, 3145, exempts any political subdivision, etc., from the payment of the fee provided by Section 6 of Chapter 147, Laws of 1909. On the contrary, however, any private individual requiring a grant from the State Board of Land Commissioners for a right of way over state lands for the purpose of an irrigation ditch, reservoir, railroad, private road, telephone and telegraph lines, etc., must pay the fees provided for in Section 6 of said Act.

I will instruct the Register of the State Board of Land Commissioners in accordance with this letter.

Respectfully,

S. C. FORD,

Attorney General.