

**State Officers, Fee for Issuance of Commission—Commission of State Officers, Fee for—Officers of State, Fee
suance of their commissions.**

The Secretary of State is without authority to charge state officers either elective or appointive, a fee for the issuance of their commission.

November 19, 1920.

Hon. C. T. Stewart,
Secretary of State,
Helena, Montana.

Dear Sir:

In an opinion rendered November 27th, 1918, I advised you that it was not the intention of the legislature that paragraph XIV of Section 165, Revised Codes of 1907, should apply to commissions issued to executive and judicial officers of this state.

You now advise me that you find upon examination of the records in your office that, prior to the present administration a fee was not charged to elective officers but only to those appointed by the governor, and request that I give you a written opinion, enumerating the officers, both elective and appointive, that must be charged a five dollar fee, beginning with the Governor and including all appointments of departmental officials, boards, and commissions created by the legislature.

Paragraph XIV of Sec. 165, Revised Codes, is as follows:

“For each commission or other document signed by the governor and attested by the secretary of state (Pardon and Military Commissions excepted) Five Dollars.”

I do not understand how, under such paragraph, any distinction can be drawn between elective and appointive officers. They must be treated alike, and are either required to pay the fee, or not required to do so, regardless of whether they are elective or appointive officers.

The term “executive and judicial officers of this state” as used in the opinion of November 27th, includes all public officers save those belonging to the legislative department of the state, who owe any duties to or perform any services for the state, and includes both elective and appointive officers.

I cannot attempt to comply with your request that I enumerate all officers, both elective and appointive, who should be and who should not be charged this fee, and it is not necessary for me to do so.

Whether such fee is to be charged depends entirely upon whether the officer owes any duties to and is required to perform any services for the state. For instance, the Secretary of State, an elective officer, owes certain duties to and is required to perform certain services for the benefit of the state, and the commission issued to him is issued merely for the purpose of evidencing his authority. So also with the Chairman of the Industrial Accident Board, an appointive officer, and

the State Game Warden, an appointive officer. On the other hand, a notary public or commissioner of deeds owes no duties to the state, and any services rendered are not rendered to the state.

You are therefore advised that it is my opinion that no officer, elective or appointive, who, by virtue of the office, owes any duty to the state or is required to perform any service for the state, is required to pay any fee under Section 165, paragraph XIV, but that the same only applies to commissions issued to persons to act as notaries public, commissioners of deeds and others who owe no duties to and are not required to render any services to the state by reason of holding such commissions.

Respectfully,

S. C. FORD,

Attorney General.