

**County Clerk—County Surveyor — Elections — Fees —
Nominating Petitions.**

As no salary is provided for the County Surveyor, the County Clerk should collect the sum of \$5.00 for filing his petition for nomination for the office.

L. Q. Skelton, Esq.,
State Examiner,
Helena, Montana.

My dear Mr. Skelton:

You have submitted to this office the question of what fee should be paid to the County Clerk for filing the nominating petition of the County Surveyor.

Chapter 133, Session Laws of 1923, provides, in part, as follows:

"The fees required to be paid for filing such petitions shall be as follows:

For any office with a salary attached of One Thousand (\$1000.00) Dollars or less per annum, Ten (\$10.00) Dollars; except candidates for the State Senate and House of Representatives shall be Fifteen (\$15.00) Dollars.

For any office with a salary attached of more than One Thousand (\$1000.00) Dollars per annum, one per cent (1%) of total amount of annual salary. * * *

For any office the compensation of which consists of fees instead of a salary, Five (\$5.00) Dollars."

Section 4921, Revised Codes of 1921, provides:

"The County Surveyor is entitled to receive and collect for his own use the following fees:

"For services in making a survey required by any court, or upon the application of any person, the sum of seven dollars per day, to be paid by the person making the application, and if made for the county by order of the Board of County Commissioners, to be paid out of the contingent fund.

"For copies and certificates, per folio, twenty cents.

"For copy of any plat of survey, two dollars.

"Expenses of chain men and markers, if furnished by Surveyor, not to exceed per day, three dollars."

In the case of State v. Story, 53 Mont. 573, 576, the Supreme Court, in defining illegal fees, said:

"The result (of re-examining the subject) has been to confirm our view that the term 'illegal fees' is used in Section 9006 in its broadest sense, as meaning any moneys collected or attempted to be collected, by a public officer from any source whatever, **whether in the guise of mileage, per diem or specific charge for service rendered**, or to be rendered, in his office without authority of law for such collection."

It is, therefore, my opinion that as no salary is provided for the County Surveyor, and as he is entitled to fees only, the County Clerk should collect the sum of \$5.00 for filing his petition for nomination for the office.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.