

Clerk of District Court—Fees—Attachment—Constable—Officers.

A constable when sued for damages for wrongful attachment is required to pay fees to the clerk of the district court.

L. Q. Skelton, Esq.,
Superintendent of Banks,
Helena, Montana.

December 12, 1924.

My dear Mr. Skelton:

You have requested my opinion whether the clerk of the district court is permitted to charge an appearance fee and a fee for a judgment in an action brought against a constable to recover damages for wrongful attachment.

The statute exempting the payment of fees by a political subdivision and by officers acting therefor is section 4893, R. C. M. 1921, which provides as follows:

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

This section in my opinion exempts public officers only in those cases where they are prosecuting or defending an action on behalf of the state or a county, or a subdivision thereof. It does not exempt the officer from the payment of fees when he is prosecuting or defending an action solely on his own account. This seems clear from the words “acting therefor” appearing in the statute. The fact that the constable or officer in the particular matter out of which the action arose may have been acting for a political subdivision, in my opinion, is of no consequence.

It is, therefore, my opinion that a constable when being sued for damages for wrongful attachment is required to pay the statutory fees to the clerk of the district court.

Very truly yours,
L. A. FOOT,
Attorney General.