

**Tests—Grain—Inspection Laboratory—Fees—Counties.**

No fee should be charged a county by the Montana grain inspection laboratory for making tests for state or county purposes.

May 16, 1928.

Homer A. Hoover, Esq.,  
County Attorney,  
Circle, Montana.

My dear Mr. Hoover:

You have requested my opinion on the following question: Where the county sheriff sends samples of wheat to the Montana grain inspection laboratory to be tested in order to secure evidence in a criminal case, is the laboratory entitled to charge the county for this service?

In considering this question it will be noted that under the provisions of section 904 R. C. M. 1921 the testing of grain for this purpose is not made part of the duty of the laboratory, and therefore no provision is made in the act itself covering this situation.

Section 908 of said act provides:

“Samples of wheat sent in by individuals, the results from the testing of which samples are of no general or market value, shall be charged a fee sufficient to cover the cost of making the test. Fees so collected are to be deposited in a fund in charge of the director of the experiment station, to be used in support of the laboratory. Any surplus remaining in this fund at the

close of the state's biennium shall be turned over to the state treasurer and shall revert to the state general fund."

However, the county is not an individual but a subdivision of the state, and it is evident that this section applies only to individuals sending in samples under the provisions of sections 904 and 911 of said act. It is therefore necessary to refer to the statutes in general in order to ascertain what fee, if any, should be charged counties.

In regard to county officers section 4893 provides:

"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."

The reason for this provision is obvious as in both instances the money is paid by the taxpayers. While there is no statute prohibiting a state officer from charging the county a fee it would appear only logical that the rule would apply to the state as well as counties, as the same principle is involved.

It is therefore my opinion that no fee should be charged a county by the Montana grain inspection laboratory for making tests for state or county purposes.

Very truly yours,

L. A. FOOT,  
Attorney General.