

Fees—County Clerk and Recorder.

Fees to be charged by the clerk and recorder in certain instances and their disposition stated in the opinion.

Mr. J. H. Forster,
County Attorney,
Malta, Montana.

August 24, 1931.

My dear Mr. Forster:

You state that the county clerk and recorder is furnished with a blank and requested to give the following information:

1. Assessed value of real estate owned by a person named in the blank.
2. Assessed value of the personal property owned by him.
3. His delinquent taxes, if any.
4. Any judgments against him.
5. Chattel mortgages, if any.
6. Real estate mortgages, if any.

You state that these persons tender \$1.00 for supplying above information concerning each person, and you inquire if the dollar should be paid into the county treasury or if the county clerk and recorder or his deputy is entitled to retain it.

With reference to items 5 and 6, section 4917 R. C. M. 1921 provides that the fee of the county clerk and recorder for searching any indexed record of files in his office in abstracting or otherwise is 15c for each year and for an abstract of title when made from original records and files 50c for each conveyance, encumbrance or other instrument affecting title.

Section 4807 permits the county clerk to make searches for instruments in his office upon the payment or tender of the fees therefor.

Section 4864 prohibits a county officer from receiving for his own use any fees or emoluments for any official service rendered by him

and requires all such fees and emoluments to be paid into the county treasury. The furnishing of the information required under items 5 and 6 would necessitate a search of the index of chattel mortgages and real estate mortgages. If the county clerk does this he does so as an officer and not as an individual and the fees prescribed therefor must be paid into the county treasury under the statutes above mentioned. The same is true if he makes an abstract of the chattel mortgages or real estate mortgages.

As to items 1, 2, 3 and 4, the information furnished by him cannot be procured from the records in his office but would have to be obtained by him from the assessor, treasurer and clerk of court. It is no part of his official duty to procure or furnish this information. If he does so it is merely as a private person and not as county clerk and recorder. He must not assume to furnish such information in his official capacity but only as an individual. Any fees received for this service furnished by him as an individual he would be entitled to retain for himself but said information must be furnished at his own expense as an individual and not in any manner that would indicate to the person receiving it that it was official information from the county clerk and recorder.

As to items 5 and 6, the service of furnishing the information requested is official service for which the fees provided by law must be charged and paid into the treasury.

Very truly yours,

L. A. FOOT,

Attorney General.