

Investment Commissioner — Investment Company — Licenses—Fees.

The investment commissioner should collect a filing fee of \$2.50 from each investment company for each annual or special statement filed by them. There is no fee for issuing permits to do business nor does the law require a license or permit to be renewed each year.

Mr. George P. Porter, March 11, 1931.
State Auditor and ex-officio Investment Commissioner,
Helena, Montana.

My dear Mr. Porter:

I have your request for an opinion.

Your first inquiry is whether a company which has been licensed by your department under the investment law must pay a filing fee of \$2.50 when you require them to file special reports or statements, or whether they are required to pay the filing fee only when they file their annual statement.

Section 4041, R. C. M. 1921, requires every investment company or stockbroker licensed under the investment law to file at the close of business December 31 of each year, "and such other times as required by the investment commissioner," a statement of its financial condition, and that "each such statement" shall be accompanied by a filing fee of \$2.50.

It is my opinion that under this section this filing fee applies to the special statements required by the investment commissioner as well as to the annual statements, and if this was the only law upon the subject at the present time I would so hold without further discussion, but in 1929 the legislature by section 5 of chapter 179 of the session laws of that year amended section 4050, R. C. M. 1921, by which it is provided that certain enumerated fees shall be paid to the investment commissioner, among which is found, "The fee for filing the annual statement of an investment company as stockholder shall be Two Dollars and Fifty Cents (\$2.50), as provided by section 4041."

It will be noted that no mention is made of a fee for filing special statements though they may be required to be filed under the terms of said section 4041.

If said section 4050 as amended could be held to be an enumeration of all the fees chargeable by the commissioner it would, of course, bar the charging of a filing fee of \$2.50 for special statements filed under the provisions of section 4041. However, it will be observed that section 4043 requires the payment of an examination fee and no mention is made of this in section 4050 as amended. It is apparent that by the enactment of the last mentioned section that the legislature did not contemplate enumerating all the fees therein which the commissioner could charge under other sections of the law; otherwise the examination fee would have been included in the enumeration. It appears to me that section 4050 as amended only intended to cover those fees which are chargeable to all investment companies and stockbrokers who came under the act and which must be paid as a matter of course by reason of their operation thereunder, and that it does not include those fees which are chargeable under other provisions of the law under special circumstances arising in connection with the affairs of individual companies or stockbrokers operating under the act.

Therefore, it is my opinion that a filing fee of \$2.50 may be charged for filing the special statements as well as for filing the annual statements.

You also inquire if there is any fee to be paid for the permit that is issued by you to an investment company doing business in this state under said law. Said section 4050 as amended provides that each investment company licensed under the act and selling securities as defined in section 4027 must pay each year a fee based upon the total assets of such investment company and a schedule is provided in said section for the determination of the fee. This is an annual fee—not a fee for the issuance of the permit. The fee is not chargeable until after the permit has been issued and the annual statement has been filed. I find nothing in the act which could be denominated a fee for issuing the permit.

You also inquire if the license or permit must be renewed each year. I do not find anything in the law which provides for an annual renewal thereof.

Very truly yours,

L. A. FOOT,

Attorney General.