

Clerk of District Court—Fees—Stenographer's Fee.

Clerk of district court may not charge the stenographer's fee of \$3.00 required by section 8932, R. C. M. 1921 in cases where trial was had upon a stipulation of facts as there was no fact to be tried by the court or jury.

Mr. Carl B. Peterson,
Clerk of District Court,
Plentywood, Montana.

March 21, 1931.

My dear Mr. Peterson:

You request an opinion as to whether you should charge the \$3.00 fee required to be charged by section 8932, R. C. M. 1921, in a case where the pleadings raised questions of fact but instead of the issues of fact being tried before the court sitting without a jury the parties filed a stipulation of the facts and the court entered judgment upon the stipulation and the agreement of counsel as to what the judgment should be.

Section 8932, R. C. M. 1921, reads as follows:

"In every issue of fact in civil actions tried before the court or jury, before the trial commences, there must be paid into the hands of the clerk of court, by each party to the suit, the sum of three dollars, which sum must be paid by said Clerk into the treasury of the county where the cause is tried, to be applied upon the payment of the salary of the stenographer, and the prevailing party may have the amount so paid by him taxed in his bill of costs as proper disbursement."

It will be observed from the above section that the fee must be paid in those civil actions in which there is an issue of fact tried before the court or jury and that the fee is payable before the trial commences. The "trial" above referred to means the trial of the issue of fact. Where the facts are stipulated there can be no issue of fact to be tried by the court or jury. In such a case all that is left for the court to do is to determine the law that is applicable to the facts.

As the \$3.00 fee mentioned in the above section may only be collected where there is a fact issue to be tried by the court or jury it follows that in the absence of such a trial the fee mentioned in said section cannot be collected.

In the case mentioned by you it is apparent there was no trial of a fact issue by the court as that was dispensed with when the parties stipulated the facts.

It is therefore my opinion that in the case mentioned by you, you are not authorized by the statute to collect from the parties the fee mentioned in section 8932, supra.

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