Trade-Marks—Filing—Secretary of State—Fees.

Notwithstanding house bill 192 of the session laws of the twenty-second legislative assembly, the secretary of state should charge $5.00 for filing and recording a trade-mark and one dollar for issuing certificate of record.

Mr. W. E. Harmon, April 22, 1931.
Secretary of State,
Helena, Montana.

My dear Mr. Harmon:

You request an opinion whether under house bill 192 of the last legislative assembly you must charge $3.00 for filing and recording a trade-mark, or if you should charge $5.00 therefor and $1.00 for issuing certificate of record under the provisions of section 145, R.C.M. 1921.

House bill 192 amends section 4288, R.C.M. 1921, which is a part of the act relating to the recording of trade-marks. Section 4288 was originally enacted in 1899 and it provided that the secretary of state should keep for public examination a record of all trade-marks or names filed in his office and that he should not record any two similar trade-marks or names. It also provided that at the time of filing and recording a trade-mark or name he should collect from the claimant a fee of $3.00.

Section 145, R.C.M. 1921, relating to the fees to be charged by the secretary of state, which was a part of the policial code of 1895 and which was amended in 1899 (the year of the enactment of section 4288) provided that for filing each trade-mark the secretary should charge $3.00 and for issuing each certificate of record thereof $1.00. It will

thus be seen that the provisions of sections 145 and 4288 were uniform. This uniformity existed until 1921 when the legislative assembly, by chapter 91 of the laws of 1921, amended section 145 (which was then section 165, R.C.M. 1907) and which amendment provided that the secretary should charge $5.00 for filing each trade-mark and $1.00 for issuing certificate of record. With the enactment of this amendment to section 145 the legislature impliedly repealed so much of section 4288 as related to the fee to be charged for filing a trade-mark because there is a direct conflict between the two sections as to the amount of fee to be charged for that service and in such cases the later act prevails.

House bill 192 of the last legislative session amending said section 4288 shows on its face that the purpose of the amendment was to permit the secretary to file a trade-mark or name similar to one already filed if an affidavit was filed with the secretary to the effect that the trade-mark or name previously registered had not been used for a period of five years preceding the filing of the affidavit. After making this amendment the legislature then incorporated that part of section 4288 which had been repealed by implication as aforesaid, as follows:

> "He must, at the time of filing and recording a trade-mark or name, collect from the claimant a fee of Three Dollars ($3.00)."

The above quoted words were the identical provisions of section 4288 which had theretofore been repealed by implication as aforesaid and apparently the legislature inserted them believing that they were still a part of the laws of the state of Montana. It is plain that the intention of the legislature was to make the change above noted regarding the filing of two similar names and it was also the intention of the legislature to make no change regarding the filing fee. The incorporation of the provision for paying a filing fee of $3.00 was, as above stated, due to the fact that the legislature thought that part of section 4288 was still a part of the laws of Montana, but as that part of said section had been previously repealed the amendment reincorporating it in the section was a nullity unless it appears from the law that the intention of the legislature was to change the existing law upon the amount of fees to be paid. As stated above, this intention does not appear from the legislation.

If it were to be held that under house bill 192 the secretary is to charge a fee of $3.00 instead of $5.00 and $1.00 as provided in section 145, such a holding would have to be based upon the theory that house bill 192 repealed by implication that part of section 145 relating to the same subject. Repeals by implication are not favored and especially is that true where the provision of the subsequent act is one which the legislature had previously, by another act, discarded as no longer the law of the state and where it appears as here that the incorporation of a provision in the amending act was merely upon the belief that it was the existing law of the state and not in conflict with another law which had superseded the provision reincorporated in the amending law.

It is therefore my opinion that in charging fees for filing trade-marks and issuing certificates of record you should be governed by sub-

division 16 of section 145, laws of 1929, which provides for the charging of fees of $5.00 and $1.00 for the respective services.

Very truly yours,

L. A. FOOT,

Attorney General.