

Opinion No. 88**County Treasurer — Clerk of Court —
Clerk and Recorder—Fees.**

HELD: County treasurer is required to furnish information to the public regarding taxes but is not required to furnish certificate; and if he voluntarily furnishes it, he cannot charge a fee therefor.

Clerk of court and clerk and recorder charging fee for searching record, should furnish a certificate or statement. No form is required.

Liability of officers and bondsmen depends upon facts in each case.

February 23, 1933.

You have submitted the following questions:

"We are herewith attaching a certificate form which some banks are requesting county officials to certify to.

"Please give us your opinion as to whether it is the official duty of the various county officers to make such certificates.

"If they do make such certificates, do they or their bondsmen incur any liability in case of error?

"If such certificates are to be made, what should each of the officers charge for his service?"

In regard to the county treasurer, the certificate calls for certain information in regard to delinquent taxes and taxes levied for the current year. While it is the duty of the county treasurer to furnish information to taxpayers regarding the amount of taxes delinquent and levied, I find no provision in the statutes of Montana which requires him to furnish a par-

ticular form of certificate carrying his signature and seal for which he is required or permitted to make a charge. (See opinion No. 84, this volume.) In the absence of a duty expressly or impliedly imposed by statute, I am of the opinion that he is not required to furnish such certificate. The statute does not make any provision for a fee for such service and in case the treasurer voluntarily furnishes such certificate no fee would be permissible as it is not the policy of the law that any official should use his official position for the purpose of private gain.

Section 4918, R. C. M. 1921, which lists the fees to be charged by the clerk of the district court, fixes a fee for searching the records. While the statutes do not require that he make a certificate over his signature and seal in the form submitted, since the law imposes the duty for which he must make a charge, a statement or certificate signed by him setting forth the result of his search would be, it would seem, an implied duty.

Since fees are only collectible when expressly authorized by law and an officer demanding fees, either from the public or the state or other governmental bodies, must point to a particular statute authorizing them (46 C. J. 1017, Sec. 244), and since the statute does not authorize the collection of a fee for the search, to-wit: 25c for each year of files, the clerk of the court, if he issues a certificate setting forth the result of his search, may not make a charge for such certificate.

Section 4917 sets forth the fees of the county clerk, which include fees for searching the index records and for making abstracts of title, which fees, of course, must be paid to the county treasurer. What I have said regarding the duties of the clerk of the court would apply to the county clerk. The statute does not authorize the collection of a fee for making a certificate setting forth the result of his search, nor for a certificate in connection with the making of an abstract of title, and therefore no fee can be charged for making a charge for such certificate, if made. It goes without saying that the county clerk and recorder should make no assertion in his statement, or certificate, except what his record actually discloses.

In the absence of specific facts, I do not believe that I should attempt to pass an opinion on the liability of either of these officers, or their bondsmen, for loss in case of error. So many factors enter into the question of the personal liability of an officer and his bondsmen that no opinion should be expressed except upon a given state of facts for each case. In the absence of such facts, it would serve no useful purpose to make general statements regarding the law.