

October 31, 1935.

State Water Conservation Board
The Capitol

You have requested my opinion upon the following proposition:

"Is it necessary for the water users associations incorporated under the general incorporation act of the State to pay filing fees for the filing of their articles of incorporation?"

It is my understanding that water users' associations are required to be organized under the General Incorporation Act of the State by the Federal Government when entering into loan and grant agreements in the aid of the construction of irrigation and reclamation projects. While the capitalization and par value of the stock is fixed in the articles of incorporation, the stock is not actually purchased by the water user and is also assigned to the State Water Conservation Board or its trustee. These corporations are of the non-profit class and the title to the irrigation projects rests in the State.

Section 147 R. C. M. 1921, provides: "Any water users' association, organized in conformity with the requirements of the laws of the United States and of the State of Montana, under the reclamation act of June 17, 1902, which, under the articles of incorporation, is authorized to furnish water only to its stockholders, shall be exempt from the payment of any incorporation tax and from the payment of any annual franchise tax, and upon filing its articles of incorporation with the Secretary of State, shall be required to pay only a fee of ten dollars for the filing and recording of such articles of incorporation, and the issuance of certificate of incorporation."

The water users' associations in question are organized in a similar manner to those enumerated in this section but since specific mention is made of the "Reclamation Act" of June 17, 1902, and as the legislature did not amend this section it is my opinion that its provisions would not apply to the corporations now being organized under the State Water Conservation Act.

Section 4893, R. C. M. 1921, pro-

Opinion No. 195.

Water Conservation Board—Water Users Associations—Corporations—County Officers—Secretary of State—Filing Fees.

HELD: 1. That the state water users' associations are not subject to payment of filing, recording and certification fees to county officers.

2. That the Secretary of State cannot charge the State Water Conservation Board or subordinate district organizations for office searches or certified copies of laws or resolutions passed by the Legislative Assembly relative to this subject.

3. Water users' associations are required to pay a corporate filing fee of Twenty (\$20.00) Dollars and do not come within the provisions of the fee fixed and collectable in the case of private corporations.

vides: "No fees must be charged the State, or any county, or any subdivision thereof, or any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees."

This provision is a reenactment of Section 4612, Political Code of 1895, and a portion of Part IV, Title II of that code entitled "Government of Counties."

Our Supreme Court in the case of *Crow Creek Irrigation District v. Crittenden*, 71 Montana 67, impliedly held this section only applies to the filing fees in counties. The court in part held: "Section 4887, Revised Codes, requires every salaried county official to collect the fees therein enumerated for the use of the county: but Section 4893 provides: 'No fees must be charged the State, or any county, or any subdivision thereof, or any public officer acting therefor * * * for official services rendered, and all such services must be performed without the payment of fees.'"

This case further held: "An irrigation district is a public corporation organized for the government of a portion of the State and for the promotion of the public welfare."

Section 1 of Chapter 35 of the Extraordinary Session of 1933 provides in part: "It is hereby declared that the public interest, welfare, convenience and necessity require the construction of a system of works, in the manner hereinafter provided, for the conservation, development, storage, distribution and utilization of water. The construction of said system of works is, and is hereby declared to be, a single object; and the construction, operation and maintenance of said system of works, as herein provided for, is hereby declared to be in all respects for the welfare and benefit of the people of the state, for the improvement of their prosperity and living conditions; and the State Water Conservation Board hereinafter created shall be regarded as performing a governmental function in carrying out the provisions of this Act."

In line with this decision county officials would not be permitted to charge filing fees for projects of this nature but the provisions of this sec-

tion would not apply to the office of the Secretary of State.

Chapter 50, Laws of 1935, in amending Section 145, R. C. M. 1921, and in repealing Section 146 of said codes, provides in part: "The Secretary of State, for services performed in his office, must charge and collect the following fees: * * *. Providing, that no fee for filing any articles of incorporation or increase of capital stock shall be less than Fifty Dollars except those enumerated in the next subdivision, which do not have capital stock and are not organized for the purpose of profit. * * * For all services in connection with the issuance of certificate, filing and recording of each of the following, whether foreign or domestic, Twenty Dollars; * * * agricultural societies, stock growers' associations, grazing associations and other associations of like character, including local, independent and subordinate organizations, as well as state, supervisory, governing and grand organizations. * * * Provided, however, that the above enumerated organizations do not have capital stock and are not organized for the purpose of profit."

Chapter 50, Laws of 1935, further provides in part: "* * * that no member of the Legislative Assembly, or state or county officer, can be charged for any search relative to matters appertaining to the duties of his office; nor must he be charged any fee for a certified copy of any law or resolution passed by the Legislative Assembly relative to his official duties."

While it is true that the charters of the water users' associations provide for capital stock such issuance and holding of shares of stock is merely for the purpose of setting up a local unit of (the State Water Conservation Board) a State governmental agency. The capital stock is simply a yard stick for fixing a basis for bond issues and the retirement of the same from water rental payments. No charge is made for the stock and the corporation has no assets.

For these reasons it is my opinion that stock in these corporations is not stock as contemplated under the provisions of Chapter 50, Laws of 1935. The language of this chapter when construed in connection with Chapter

35, Laws of 1935, and by considering the decision in the case of Crow Creek Irrigation District v. Crittenden makes it clear that these corporations are "independent subordinate branches of a state supervisory organization" and would come within the classification of Chapter 50 of the S. L. of 1935.

For the reasons stated it is my opinion:

1. That the State Water Users' Associations are not subject to payment of filing, recording and certification fees to county officers.

2. That the Secretary of State cannot charge the State Water Conservation Board or subordinate district organizations for office searches or certified copies of laws or resolutions passed by the Legislative Assembly relative to this subject.

3. Water users' associations are required to pay a corporate filing fee of Twenty Dollars and do not come within the provisions of the fee fixed and collectable in the case of private corporations.