

Opinion No. 155.**Courts—Fees—State Officers—State
Water Conservation Board.**

HELD: The members of the State Water Conservation Board are state officers. The board is a state agency, performing governmental functions and under the provisions of Section 4893 is exempt from paying court fees, including stenographer's fees, etc.

October 19, 1939.

State Water Conservation Board
Helena, Montana

Gentlemen:

You have submitted the question whether the State Water Conservation Board, when it becomes necessary to engage in litigation in the state courts, is required to pay court fees such as fees for filing complaint, answer, or other appearance, stenographer's fees, etc.

Section 4893, R. C. M., 1935, provides:

"No fee must be charged the state, or any county, or any subdiviison thereof, or any public officer acting therefor, or in habeas corpus proceedings for official services ren-

dered, and all such services must be performed without the payment of fees."

The State Water Conservation Board consists of the Governor, the State Engineer and three others appointed by the Governor. (Section 349.3 Id.) There can be no question but that all the members of the board are state officers. As such they act for the State of Montana, for Section 349.23 Id., expressly declares that State Water Conservation Board to be a state agency. Its creation by the legislature was declared to be for "the public interest, welfare, convenience and necessity" for the purpose of the construction, operation and maintenance of a system of water works 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." (Section 349.1 Id.) It is a non-profit organization, the cost of administration is paid out of funds appropriated by the legislature and paid by state warrants after claims have been submitted to and approved by the State Board of Examiners. The Attorney General is the legal adviser for the board.

Since the members of the board are "public officers" and the board is a "state agency" performing a "governmental function," Section 4893 expressly exempts them from the payment of the fees mentioned. Our Supreme Court has held that the term "fees," as used in this section, "imports specific charges to be collected from private individuals for particular services."

State v. Story, 53 Mont. 573, 578, 165 Pac. 748;

Crow Creek Irrigation District v. Crittenden, 71 Mont. 66, 68, 227 Pac. 63.