

No. 175

STATE—COUNTY—CITY—PUBLIC OFFICER—FEES

Held: Cities and towns which are subdivisions of the state are exempt—
under the provisions of Section 4893, Revised Codes of Montana,
1935—from the payment of fees for any official service rendered
them.

July 16, 1941.

Mr. John F. McGough
County Attorney
Jefferson County
Boulder, Montana

Dear Mr. McGough:

The City Clerk of the City of East Helena mailed to the County Clerk and Recorder for filing and recording a conveyance in the form of an easement, given by the East Helena State Bank to the City of East Helena; and, while a fee of 60¢ (sixty cents) would be the usual charge for the filing and recording of that easement under ordinary circumstances, you desire an opinion whether or not an incorporated town or city in the State of Montana should be compelled to pay filing and recording fees in such a case.

Under the provisions of Section 4893, Revised Codes of Montana, 1935, no fees must be charged the state, county, or any subdivision thereof, or any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and such services must be performed without the payment of fees.

Therefore, we consider the question whether or not a city or town is a subdivision of the state and, if such be the case, then no fee should be charged as provided for in the above mentioned section.

A municipal corporation is commonly called a "municipality"—a word formerly employed to designate only the body of officers of the corporation, but now by judicial recognition and common use enlarged to a synonym of the corporation in its entirety. The term "municipality" is all embracing. The term includes cities of all classes as well as towns. (43 C. J. 66.)

The next question presented is the governmental aspect of a municipal corporation. Is a municipality considered to be a subdivision of a state? The question is answered in the affirmative. A municipal corporation, being recognized as an appropriate instrumentality for the administration of general laws of the state within its boundaries and appointed and empowered for that purpose, thereby becomes an agent of the state for local administration and enforcement of its sovereign power. This is the governmental aspect of the municipal corporation. In their public and governmental aspects, municipal corporations are referred to as "governmental subdivisions of the state." (43 C. J. 70.) They are not only representatives of the state but portions of its governmental power.

I agree with your opinion directed to Mr. James S. Flaherty, County Clerk and Recorder of Jefferson County.

Therefore, I am of the opinion cities and towns which are subdivision of the state are exempt—under the provisions of Section 4893, Revised Codes of Montana, 1935—from the payment of fees for any official services rendered them.

Sincerely yours,

JOHN W. BONNER
Attorney General