

No. 20

JUSTICE OF THE PEACE PROHIBITED FROM PRACTICING LAW—PRACTICING LAW, What Is.

Held: A Justice of the Peace has no right to draw any papers by which an action or proceeding in court may be set in motion.

February 11, 1941.

Mr. Burke F. Flick
County Attorney
Deer Lodge County
Anaconda, Montana

Dear Mr. Flick:

You have submitted the following request for an opinion:

"What is your interpretation of the privileges of Section 4863, Revised Codes of Montana, 1935, relating to the legal right of the Justice of the Peace to draw criminal complaints or any other papers by which an action or proceeding may be set in motion?"

Section 4863, Revised Codes of Montana, 1935, provides as follows:

"Section 4863. Justice not to practice law. No justice of the peace shall practice law, draw contracts, conveyances, or other legal instruments or documents, nor shall they take any claim or bill for collection, nor act as a collection agent in any sense whatever, nor shall they perform any legal duties other than those prescribed by law as their official duties in the conduct of cases and proceedings in their courts. Any justice of the peace violating any of the provisions in this section shall be deemed guilty of a malfeasance in office, and shall forthwith be removed from his office of justice of the peace, and shall thereafter be disqualified from holding such office."

Section 8944, Revised Codes of Montana, 1935, provides as follows:

"Section 8944. Who deemed to be practicing law. Any person who shall hold himself out, or advertise as an attorney or counselor-at-law, or who shall appear in any court of record or before a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a court, or who shall engage in the business and duties and perform such acts, matters, and things as are usually done or performed by an attorney-at-law in the practice of his profession for the purposes of this act, shall be deemed practicing law."

Several states have provisions somewhat similar to Section 4863, *supra*, but their courts have seldom been called upon to interpret them. The language of our section is quite broad, prohibiting the practice of law, drawing contracts, conveyances, or other legal instruments or documents, and a complaint in a criminal action would come within the terms "legal instrument or document" since it is an instrument or document necessary to a legal proceeding.

See *In Re Bailey*, 50 Mont. 365, 146 Pac. 1101, wherein our court held that a man was practicing law in a court of record when he prepared, signed and filed proceedings, formulated briefs, and advised clients touching upon legal matters.

"The practice of law is not an inherent right, but a privilege subject entirely to state control."—*Id.*

See also Vol. 6, Attorney General's Report, 185.

Webster's International Dictionary defines "legal instrument." The word "legal" is defined as:

"of or pertaining to law; arising out of or by virtue of, or included in law; based upon, or governed by, law."

The word "instrument" is defined as:

"a writing as the means of giving formal expression to some act; a writing made and executed as the expression of some act, contract, process, or proceeding, as a deed, contract, writ, etc."

I am unable to find any law on the statute books of our state which gives to the justice of the peace the right, or defines it as his duty, to draw complaints in a criminal action or any other papers by which an action or proceeding may be set in motion—and nowhere within our statutes do I find where the justice of the peace might charge a fee for the drawing of a criminal complaint.

I am therefore of the opinion that a justice of the peace has no right to draw a complaint in a criminal action or any papers by which a proceeding may be set in motion.

Sincerely yours,

JOHN W. BONNER
Attorney General