

No. 218

COUNTY CLERKS AND RECORDERS—FEES

Held: By reason of Chapter 87, Laws of 1941, County Clerks and Recorders cannot—since the 1st day of July, 1941—charge a fee of \$1.00 for recording and indexing a quitclaim deed and a fee of \$1.50 for recording and indexing a warranty deed, but instead must charge 30¢ for the first folio and 15¢ for each subsequent folio, or fraction thereof, plus 10¢ for each entry in the index, plus 50¢ for a certificate that such instrument has been recorded, with seal affixed.

August 23, 1941.

Mr. Walter T. Murphy
County Attorney
Mineral County
Superior, Montana

Dear Mr. Murphy:

You have written to this office as follows:

“The County Clerk and Recorder has asked me to request your opinion regarding Chapter 87 of the Session Laws of 1941, governing his fees.

“This enactment amends Section 4917 of the Revised Codes. Section 4917 provided for a fee of \$1.00 for recording and indexing a quitclaim deed, and a fee of \$1.50 for recording and indexing a warranty deed. In Chapter 87 of the 1941 Session Laws, these paragraphs were omitted, and no reference made, to fees for recording quitclaim or warranty deeds.

“Since Chapter 87 is an amendment to Section 4917, it is my opinion the legislature must have intended to abolish the fee for recording deeds.

“Of course, Chapter 87 contains the paragraph, ‘For filing or recording or indexing any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service,’ but this same paragraph was contained in Section 4917, together with the provisions for fees for recording deeds. Since the amendment (Chapter 87) deletes the provisions regarding fees for recording deeds, it is my opinion a fee could not be imposed for recording such instruments under this general provision.

“We would like to have your opinion as to whether the Clerk should sharge fees for recording deeds.”

I have examined Chapter 87, Laws of 1941, and have also examined the original enrolled House Bill 176 which is on file in the office of the Secretary of State. In both of these no mention is made of a fee for recording and indexing a quitclaim deed, or a fee for recording and indexing a warranty deed.

There is no doubt in my mind but the legislature made a serious mistake when they amended Section 4917 in this fashion, and I do not believe they ever intended to take out the provision for the fees for recording and indexing such instruments. However, the fact remains these provisions were taken out and are not included in the amendment; and inasmuch as Section 2 of the act provides “that all acts and parts of acts in conflict herewith are hereby repealed,” I must hold the Clerk and Recorder is no longer authorized to charge a fee of \$1.00 for recording and indexing a quitclaim deed and a fee of \$1.50 for recording and indexing a warranty deed.

However, Chapter 87, Laws of 1941, does provide in part as follows:

“The fees of county clerks, which must be charged and collected for the use of their respective counties, are as follows:

“For recording and indexing each instrument of writing allowed by law to be recorded; except as hereinafter provided;

“For the first folio, thirty cents (30¢) and for each subsequent folio or fraction thereof, fifteen cents (15¢);

“For each entry in index, ten cents (10¢);

“For certificate that such instrument has been recorded with seal affixed, fifty cents (50¢).”

Both quitclaim and warranty deeds are instruments in writing and they are allowed by law to be recorded.

It is therefore my opinion the County Clerk shall charge for recording and indexing such instruments, and affixing his certificate that such instruments have been recorded, the fees which are set forth in that portion of Chapter 87, Laws of 1941, just above quoted.

Sincerely yours,

JOHN W. BONNER
Attorney General
