

## No. 294

**JUSTICES OF THE PEACE—FEES ON FILING OF DEMURRER TO COMPLAINT IN CIVIL ACTIONS—FILING FEES—DEMURRER—COMPLAINT**

**Held:** When a demurrer is filed to a complaint in a civil action in the justice court, the justice of the peace shall collect a fee therefor of \$2.50.

Mr. Hugh J. Lemire  
County Attorney  
Custer County  
Miles City, Montana

November 14, 1941.

Dear Mr. Lemire:

You have requested the opinion of this office on the question of whether, under Section 4924 of the Revised Codes of Montana, 1935, a

fee of \$2.50 is required to be paid to a justice of the peace upon the filing of a demurrer to a complaint in a civil action.

Section 4924 of the Revised Codes of Montana, 1935, insofar as applicable here, provides:

**"Fee of justices of the peace in civil actions.** The following is the schedule of fees which must be collected by justices of the peace in every civil action introduced in a justice court: . . .

"Two dollars and fifty cents **when issue is joined**, to be paid by the defendant." (Emphasis mine.)

As a general proposition "an issue may be either of fact or of law." (33 C. J. 828.)

Under the statutes of Montana there are two kinds of "issues," namely, (1) of law, and (2) of fact. (Section 9323, Revised Codes of Montana, 1935.)

Section 9324 of the Revised Codes of Montana, 1935, provides:

**"Issue of law—how raised.** An issue of law arises upon a demurrer to the complaint, answer, or reply, or some part thereof."

It cannot be said the words of Section 4924 of the Revised Codes of Montana, 1935, relating to fees of justices of the peace do not relate as much to an issue of law as to an issue of fact, and an issue of law "arises upon a demurrer to the complaint."

It is my opinion that, when a demurrer is filed to a complaint in a civil action in the justice court, the justice of the peace shall collect a fee therefor or two dollars and fifty cents (\$2.50).

Sincerely yours,

JOHN W. BONNER  
Attorney General