

No 436

**MINES AND MINING—CLAIMS, Mining—UNPATENTED
MINING CLAIMS—ASSESSMENT WORK, Notice of sus-
pension of—FILING AND RECORDING—COUNTY
CLERK—FEES**

- Held:** 1. A Notice of desire to hold unpatented mining claims under federal act suspending assessment work for certain years need not be recorded, but only filed and indexed.
2. The fee for filing and indexing such notice is fifty cents.

June 27, 1942.

Mr. Raymond Shelden
County Attorney
Carter County
Ekalaka, Montana

Dear Mr. Shelden:

You have submitted to this office the opinion rendered by you to your County Clerk with reference to filing of notice of suspension of assessment work on unpatented mining claims. I agree with your conclusion in this opinion, wherein you hold it is not required to record this notice, but I am of the opinion the fee on filing and indexing should be fifty cents.

The requirement for annual assessment work on an unpatented mining claim is governed by federal statutes, and is a condition imposed by the federal government before patent will issue. There can be no doubt as to the authority of the federal government to legislate on this question. Having the power to require such a condition, the federal government has likewise the power to suspend or abolish entirely such a condition. In this instance, the Congress has merely suspended this requirement by extending the privilege to the holder of the certificate of location to take

advantage of the benefits under certain conditions. These conditions are expressed in the act which grants the privilege in the following terms:

“. . . Provided, that every claimant of any such mining claim, in order to obtain the benefits of this act shall file, or cause to be filed, in the office where the location notice or certificate is recorded, on or before twelve o'clock meridian July 1, 1942, and July 1, 1943, a notice of his desire to hold said mining claim under this Act: . . .”
Public Law 542, 77th Congress, Chapter 294, 2nd Session. H. R. 6604.

It will be noted this statute does not provide the notice must be acknowledged or even it be witnessed. As pointed out in your opinion, under Section 6893, Revised Codes of Montana, 1935, before an instrument can be recorded it must be acknowledged. This office has on two occasions held under similar federal statutes to the same effect. (See Opinions of Attorney General, Vol. 8, Page 10, and Vol. 15, Page 392.) In the latter opinion, the Attorney General said, “It is my judgment that this notice is not an affidavit of labor which must be recorded, but is a notice to be filed and indexed.” With this view we agree.

Section 4917, Revised Codes of Montana, 1935, as amended by Chapter 87, Laws of 1941, provides the fees to be charged by the Clerk for filing, recording and indexing different instruments. There is no specific provision for filing and indexing such notice as here considered. However, Section 4917, as amended, does provide as follows:

“For filing or recording or indexing any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service.”

We have seen the notice in question is to be filed and indexed. Therefore, under the provision quoted above, the fee is to be the same as charged for “a similar service.” The only provision where a fee is provided for a service which is similar, that is, filing and indexing, is found in the following provision of this state, as amended, *supra*:

“For filing and indexing each chattel mortgage, affidavit of renewal of chattel or real estate mortgage, assignment or release of chattel mortgage, a writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, fifty cents (50¢).” (Emphasis Mine.)

Section 4917, Revised Codes of Montana, 1935, as amended.

It is therefore my opinion the notice of desire to hold an unpatented mining claim without the performance of assessment work, as provided by Chapter 294, 2nd Session of the 77th Congress, Public Law 542, need only be filed and indexed, and the fee to be charged by the County Clerk is fifty cents.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General