

No. 438

CLERK AND RECORDER—FEES—MINES AND MINING—UNPATENTED MINING CLAIMS, Notice of desire to hold

Held: Notice of desire to hold unpatented mining claims need not be recorded, but if recorded, it must be acknowledged or witnessed and must also be filed, and a fee of one dollar charged for recording in addition to a fee of fifty cents for filing.

Such notice may include more than one claim, not, however, to exceed six for an individual and twelve for partnership, association or corporation.

Only one fee may be charged regardless of number of claims included within the limitation herein stated.

June 30, 1942.

Mr. E. O. Overland
County Attorney
Sweet Grass County
Big Timber, Montana

Dear Mr. Overland:

You have requested an opinion as to the proper fee to be charged for filing and indexing notice of desire to hold unpatented mining claims, as required under a recent Act of Congress, and as to whether or not such notice may include more than one claim, and if more than one claim is included, what fee is to be charged.

On June 27, 1942, and prior to receipt of your letter, this office issued Opinion No. 436, Volume 19, Report and Official Opinion of the Attorney General, in which it was held the fee for filing such notice was fifty cents. The opinion further held the notice need not be recorded, but merely filed and indexed. The question whether such notice may include more than one claim and the fee charged in such event was not considered in the opinion.

Attorney General Ford in an opinion found in Volume 8, Report and Official Opinions of the Attorney General at page 10, held such notice may include more than one claim and the fee charged is fifty cents, regard-

less of the number of claims included in the notice. With this opinion we agree, with the added statement an individual may not include more than six claims, and a partnership, association or corporation more than twelve.

As pointed out in Opinion 436, supra, the notice need not be recorded because the Act of Congress requires only filing, and does not require such notice be acknowledged or witnessed. However, I see no objection to recording such notice as well as filing, if the party so desires. If recorded, it must be acknowledged or witnessed, as provided in Section 6893, Revised Codes of Montana, 1935, as amended by Chapter 170, Laws of 1937. Under the statutes and the Act of Congress, the notice must be filed, whether it be recorded or not, and the fee for filing must be paid as herein stated. If recorded and filed, the fee for recording must be paid in addition to the fee for filing.

It would seem clear such notice may be recorded under Section 6890, Revised Codes of Montana, 1935, which provides "any instrument or judgment, affecting the title to or possession of real property, may be recorded under this chapter." What, therefore, is the fee for recording such notice?

Section 4917, Revised Codes of Montana, 1935, as amended by Chapter 87, Laws of 1941, makes no express provision for either filing or recording such a notice. Said section, however, has the following provision:

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

The only similar service for which a fee is provided is, I think, the following:

"For filing and indexing each affidavit of annual labor on mining claims, including certificate that such instrument has been recorded with seal affixed, one dollar (\$1.00)."

It is, therefore, my opinion that, although notice of desire to hold an unpatented mining claim need not be recorded, it may be recorded if so desired, but it must also be filed and indexed. The fee of one dollar for recording must be paid in addition to fifty cents for filing and indexing, such fees to be the same regardless of number of claims included in such notice, not, however, to exceed six in the case of an individual and twelve in the case of a partnership, association or corporation.

Very truly yours,

HOWARD M. GULLICKSON
Attorney General