

**Opinion No. 130.****Clerk of Court—Fees—Proceedings for Establishment of Date of Birth.**

Held: No fee shall be collected for proceedings under Section 21-A of Chapter 44, Laws of 1943. Fees prescribed therein shall be collected for proceedings under Chapter 16, Laws of 1943. Proceedings under both chapters may be indexed in "index of suits" or in a separate index.

September 23, 1943.

Mr. Edison W. Kent  
County Attorney  
Granite County  
Philipsburg, Montana

Dear Mr. Kent:

You ask my opinion whether a person filing a petition under Section 21-A, Chapter 44, Laws of 1943, for the purpose of establishing a public record of the time and place of his birth and his parentage, must pay a fee for the petition or judgment.

Also my opinion as to where proceedings under the mentioned section, and also under Chapter 16, Laws of 1943, should be filed and indexed.

The fees to be collected by the clerk of the court are enumerated in Sections 4918 and 4919, Revised Codes of Montana, 1935. The first section providing

at the commencement of each action or proceeding, the clerk must collect from the plaintiff the sum of five dollars, and the section then goes on to enumerate other fees for certain steps in litigation and for certifying documents. The second section provides the fees in probate matters, specifically enumerating the fees for different steps therein.

It has heretofore been held by this office, Volume 17, Report and Official Opinions of the Attorney General, 248, the clerk of the court has no authority to charge a fee for filing petitions for adoption. The reasons for the ruling as set forth in the opinion, appear to be logical, and are applicable to the question of fees in your request, and upon the authority thereof, it is my opinion no fees are collectible for proceedings under Section 21-A, Chapter 44, Laws of 1943.

Particular attention, however, is directed to the fact this opinion only covers proceedings under Section 21-A, Chapter 44, Laws of 1943, and does not apply to proceedings under Chapter 16, Laws of 1943, as specific provision is made for fees under this last mentioned chapter.

As to your second question, it is to be noted Section 4815, Revised Codes of Montana, 1935, prescribes the records to be kept by the clerk of the court, and included therein are "index of all suits" and "record of probate proceedings," indexed in the name of the deceased person, etc.

The meaning of "suit" in a legal sense, as given by Webster: "An attempt to gain an end by legal process." (*Dobbins v. First National Bank*, 112 Ill. 553.)

A "suit" is "any proceeding for the purpose of obtaining such remedy as the law allows." (*State ex rel. West v. McCaffery*, 105 Pac. 992, 25 Okla. 2, quoting *Brookwalter v. Conrad*, 39 Pac. 573, 15 Mont. 464.)

It would therefore follow an action to establish the record contemplated by these two chapters would be in the nature of a suit, and be properly indexed and entered in the "index of suits," provided for by Section 4815, Revised Codes of Montana, 1935. However, as a practical thing, it would appear proper, if the clerk of the court so desires, to have a separate index, in which these

proceedings are entered. This is the course followed by some of the clerks in the larger counties.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General