

Dear Mr. Young:

You have requested an opinion of this office inquiring if a candidate who withdraws after filing his nominating petition may recover his filing fee.

Section 640, Revised Codes of Montana, 1935, provides in part as follows:

"Any person who shall desire to become a candidate for nomination to any office under this law shall send by registered mail, or otherwise, to the county clerk . . . a petition for nomination, signed by himself, accompanied by the filing fee hereinafter provided for, and such petition shall be filed . . . All nominating petitions pertaining . . . for county and district offices, to be voted for in one county only . . . shall be filed in the office of the county clerk.

"The fees required to be paid for filing such petitions shall be as follows: (filing fees for various offices listed.)"

There is no provision in said Section 640, or in Chapter 65, Political Code, Revised Codes of Montana, 1935, for repayment of the filing fee. Said section specifically provides such fee is paid for filing. (See quoted portion.) The person filing the petition takes the chance that he may not be qualified or that some unforeseen emergency or other cause may arise which would make it impossible to carry out his campaign or receive the office. See Corpus Juris 116, as follows:

"A candidate is not, upon his withdrawal prior to the election, entitled to a return of the fee required of and paid by him." (See also State v. Brodigan, 142 Pac. 520.)

It is my opinion that a person who files his petition for nomination to any office in the state of Montana is not entitled to a repayment of his filing fee upon withdrawal.

Sincerely yours,
R. V. BOTTOMLY
Attorney General

Opinion No. 234.

Candidates—Fees—Refunding of Filing Fees—Nominating Petition.

Held: Persons who file nominating petitions are not entitled to repayment of filing fees on withdrawal in the state of Montana.

August 1, 1944.

Mr. Denzil R. Young
County Attorney
Fallon County
Baker, Montana