

certificate of admission as attorney and counselor, five dollars (\$5.00)
 . . . ”

Section 8950, Revised Codes of Montana, 1935, provides in part:

“Fees on application for admission to bar. Every applicant for admission to the bar, by examination or otherwise, must pay to the clerk of the supreme court, at the time he files his application for examination or petition for admission, the sum of twenty-five dollars . . . No other fee shall be exacted for admission of any applicant, if admitted within one year after the payment of the fee of twenty-five dollars hereinabove designated . . . ”

Section 372 was enacted in Section 872 of the Political Code of 1895, reenacted as Section 301 of the Revised Codes of 1907, reenacted as Section 372 of the Revised Codes of 1921 and 1935. The above-quoted portion of Section 372 has thus been brought forward from 1895, and was reenacted by the Twenty-eighth Legislative Assembly in 1943. The certificate which is mentioned in Section 372, as amended, is provided for in Section 8938, Revised Codes of Montana, 1935:

“If upon examination he is found qualified, the supreme court must admit him as an attorney and counselor in all the courts of this state, and must direct an order to be entered to that effect upon its record, and that a certificate of such record be given to him by the clerk of the court, which certificate is his license.”

Section 8950 was enacted as Section 7, Chapter 90, Laws of 1917, reenacted as Section 8950 in the Revised Codes of 1921 and 1935. The fee of twenty-five dollars required by the section is for application for admission to the bar.

Until 1917, the date of the enactment of Section 8950, there was only one fee required to be paid by attorneys on admission to the bar. That fee was the fee required to be collected by the clerk of the supreme court under Section 301 of the Revised Codes of 1907 (now Section 372) for “certificate of admission as attorney and counselor.” In 1917, the legislature enacted Section 7, Chapter 90, which required a twenty-five dollar fee to be paid by every applicant for admission to the bar. The

Opinion No. 50.

Clerk of Supreme Court, fees—Fees—Applicant to Bar, fees

Held: The fee required by Section 8590, Revised Codes of Montana, 1935, should be the exclusive fee collected by the clerk of the supreme court from applicants for admission to the bar.

April 30, 1943.

Mr. Frank Murray
 Clerk of Supreme Court
 State Capitol
 Helena, Montana

Dear Mr. Murray:

You have requested my opinion concerning the construction of laws pertaining to fees to be collected by the clerk of the Supreme Court from applicants for admission to the bar of Montana.

Your communication suggests an apparent conflict between Section 372, Revised Codes of Montana, 1935, as amended by Chapter 112, Laws of 1943, and Section 8950, Revised Codes of Montana, 1935. You inquire whether the fee required by Section 372, as amended, should be collected in addition to the fee required by Section 8950 or whether the two sections provide for duplicate fees.

Section 372, as amended, insofar as pertinent here, provides:

“He (the clerk) must collect in advance the following fees . . . for

legislative history of the two sections, then, shows the purpose of each to be singular and separate. The sections did not provide for duplicate fees.

The question is then presented whether the fee required by Section 372, as amended, should be collected in addition to the fee required by Section 8950. Chapter 90, Laws of 1917, did not expressly repeal Section 301 of the Revised Codes of 1907. The legislature, however, by express mandate in Section 8950, declared the fee provided in that section to be exclusive under certain conditions. It declared, "No other fee shall be exacted for admission of any applicant, if admitted within one year after the payment of the fee of twenty-five dollars hereinabove designated."

Since 1917, the clerk of the supreme court, acting in compliance with the legislative mandate sounded in Section 8950, has exacted one fee from applicants for admission to the bar—the fee of twenty-five dollars. No other charge has been made. It has been the practice of the clerk to issue the certificate provided for in Section 8938 without payment of any other fee.

Applying the general rule, that in the construction of a statute, the intention of the legislature must be pursued if possible (State ex rel. Nagle v. The Leader Co., et al., 97 Mont. 586, 593, 37 Pac. (2nd) 561) I am of the opinion it was the intention of the legislature that—if an applicant is admitted to the bar within one year after payment of the fee of twenty-five dollars required by Section 8950—the certificate of admission should issue to him as a matter of course and without payment of any fee for the certificate or any other fee.

The custom or practice followed by the clerk of the supreme court—that is, collecting only one fee from applicants to the bar—has been followed since 1917. A practical interpretation by an executive department, if acted upon for a number of years, will not be disturbed except for cogent reasons. (Murray Hospital v. Angrove, 92 Mont. 101, 10 Pac. (2nd) 577; Miller Ins. Agency v. Porter, 93 Mont. 567, 20 Pac. (2nd) 643.) It may be reasonably deduced the custom, having been followed over a number of years, has had the approval of the legislature.

I am convinced the apparent conflict between Section 8950 and Section 372, as amended, was merely an over-

sight on the part of the legislature, and that body would have remedied the situation by eliminating from Section 372 that portion in question had the error been brought to its attention. (State ex rel. Krona v. Board of Examiners, decided April 23, 1943 and not yet reported.)

It is therefore my opinion the fee required by Section 8950 should be the exclusive fee collected by the clerk of the supreme court from applicants for admission to the bar.

Sincerely yours,
R. V. BOTTOMLY
Attorney General