

**Opinion No. 64.**

**O. P. A.—Federal Government—Fees—Costs.**

Held: The federal government, O. P. A., or its administrator is not exempt from payment of fee to clerk of state district court upon commencement of action or proceeding under the Emergency Price Control Act. Costs may not be assessed against the O. P. A. or its administrator in any action or proceeding under the Emergency Price Control Act.

June 9, 1943.

Mr. J. Miller Smith  
County Attorney  
Lewis and Clark County  
Helena, Montana

Dear Mr. Smith:

I have your opinion rendered to the clerk of the district court on the question whether the Office of Price Administration of the federal government is required to pay the filing fee, costs and other charges in suits filed by it in the state court. You reach the conclusion that such fee, costs and charges must be paid. Insofar as your opinion relates to "fees," I must agree.

The Emergency Price Control Act of 1942, Title 50, Section 925, U. S. C. A., gives the administrator right to sue for the enforcement of the provisions of the act, and for violation thereof. The state courts are given concurrent jurisdiction with the federal courts.

Paragraph (c) of Section 925, of the act provides in part:

"No costs shall be assessed against the Administrator of the United States Government in any proceeding under this Act."

It is generally held that the United States can not be held for costs in absence of a statute directly and specifically providing therefor. (U. S. v. Jacobs, 63 F. (2d) 326; U. S. v. Knowles' Estate, 58 F. (2d) 718; U. S. v. Worley, 281 U. S. 339, 344; The Glymont, 56 F. (2d) 252.)

Our statute, Section 4918, Revised Codes of Montana, 1935, which is part of Chapter 372 of the Political Code entitled, "Salaries and Fees," provides in part:

"At the commencement of each action or proceeding the Clerk must collect from the plaintiff the sum of five dollars . . ."

Section 4893 of the same chapter provides:

"No fees must be charged the state, or any county, or any subdivision thereof, or any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees."

It will be noted that the federal statute quoted above uses the term "costs," while the state statutes deal with the term "fees."

It would, therefore, seem important to consider the meaning of these two terms as used in statutes, both federal and state, and the interpretation given them by the courts.

In searching the authorities we find that both state and federal courts distinguish between the meaning of these terms as used in the statutes. The weight of authority appears to subscribe to the following definitions:

"The term 'fees' designates the sums authorized by law to be charged for services rendered by a public officer in the discharge of his duties as prescribed by law." (McRoberts v. Hoar, 152 P. 1046, 1048, 28 Idaho 163; City of St. Louis v. Meintz, 18 S. W. 30, 31, 107 Mo. 611.)

"'Costs' and 'fees' are readily distinguishable and each has an appropriate and peculiar meaning in law." (Parks v. Sutton, 208 P. 511, 514, 60 Utah 356; Crawford v. Bradford, 2 So. 782, 783, 23 Fla. 404.)

The term "fees" as used with the term "costs" in a federal statute (28 U. S. C. A. 832) allowing any citizen to prosecute any suit or action in the federal court without prepaying fees and costs, means the fees of the clerk in the strict sense of the word does not relate to his disbursements.

The payment required by Section 4918, supra, to be made to the clerk at

the commencement of each action, is for his services in filing the complaint or petition and is, therefore, within the definitions herein noted, a fee, as distinguished from costs. Section 4893, *supra*, exempts certain litigants from the payment of the fee required by Section 4918. The federal government is not one of those litigants exempted.

Consideration has been given the provisions of Article III of the Federal Constitution which provides in part:

“This Constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.”

However, since the federal statute (paragraph (c), Section 925, U. S. C. A.) prohibits the assessment of “costs,” and since in my opinion the term “costs” does not include “fees,” this constitutional provision does not apply.

Inasmuch as in my opinion the term “costs” as used in the federal statute, *supra*, does not include “fees” as that term is defined, the O. P. A., or its administrator, must pay the fee provided by Section 4918, when commencing any action or proceeding in the state district court. It is further my opinion that “costs,” as that term is defined and distinguished from “fees” may not be assessed against the federal government, the O. P. A. or its administrator in any action or proceeding under the Emergency Price Control Act.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General