

**Opinion No. 221.****County Clerk and Recorder—Office Hours—Records—Filing.**

**Held:** A county clerk and recorder may receive instruments for recording at any time during the twenty-four hours and must endorse upon them the time at which received, in accordance with Section 4805, Revised Codes of Montana, 1935.

November 21, 1946.

Mr. Oskar O. Lympus  
County Attorney  
Missoula County  
Missoula, Montana

Dear Mr. Lympus:

You have asked whether the county clerk and recorder may receive instruments for recording after five o'clock P. M. You have explained abstractors have questioned whether the clerk must wait until the following morning to endorse the year, month, day, hour, and minute of receipt.

Section 4805, Revised Codes of Montana, 1935, provides:

"When any instrument, paper, or notice, authorized by law to be recorded, is deposited in the office of the county clerk, as ex-officio recorder, for record, accompanied by the required fee, he must endorse upon the same at the time it was received, noting the year, month, day,

hour and minute of its reception, and must record the same without delay, together with the acknowledgment, proofs, and certificates written upon or annexed to the same, with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note at the foot of the record the exact time of its reception. The county clerk shall not receive for recording, any deed, mortgage, or assignment of mortgage unless the post office address of the grantee, mortgagee or assignee of the mortgagee, as the case may be, is contained therein, provided that this requirement shall not affect the validity of the record of any instrument which has been or may be recorded."

Section 453, Revised Codes of Montana, 1935, is a general statute relating to hours when public offices shall be open for the transaction of business and is as follows:

"Unless otherwise provided by law every officer must keep his office open for the transaction of business continuously from nine o'clock a. m., until five o'clock p. m. each day, and at other times when the accommodation of the public or the proper transaction of business requires, excepting upon holidays, excepting the state treasurer, who in his discretion may in the interest of the safe keeping of funds, securities and records under his control, close his office during the period from twelve noon to one o'clock p. m. every day."

Section 4736, Revised Codes of Montana, 1935, relates to the time of day when certain offices—including that of the county clerk—must be open for the transaction of business. It provides:

"The sheriff, the county clerk, the clerk of the district court, the treasurer, and county attorney must keep their offices open for the transaction of business from nine o'clock a. m. until five o'clock p. m. continuously every day in the year, except holidays, and at any other time when business requires it."

Section 453, supra, was interpreted by our court in the case of *State ex rel, Bevan v. Mountjoy*, (1928) 82

Mont. 594, 268 Pac. 558, 560. The court said:

"... The office hours of the secretary of state are from 9 o'clock in the morning until 5 o'clock in the afternoon of every business day, and at other times when the accommodation of the public or the proper transaction of business requires.' (Sec. 453, Rev. Codes, 1921). **He may, if he sees fit, transact business in his office at any time during the twenty-four hours . . .**" (Emphasis mine.)

The Supreme Court of California has ruled on a factual situation similar to your problem in the case of *Edwards v. Grand*, (1898) 53 Pac. 796:

"The contention of the appellants that, inasmuch as the mortgage was delivered to the recorder after the hour for closing the office, it cannot be deemed to have been filed for record until the hour for opening the office on the next morning, is untenable. We are cited to no authority in support of the proposition that an instrument can be properly filed only within the hours fixed by statute for keeping the office open. These hours are established for the purpose of defining a duty of the officer, and for the convenience of the public, and are not to be construed as limiting the time within which individuals may avail themselves of rights elsewhere conferred by statute."

53 Corpus Juris 609 states:

"... An instrument is filed when it is deposited in the proper office with the person in charge thereof, with directions to record it, **although not within the time that the office is required by statute to be kept open . . .**" (Emphasis mine.)

45 American Jurisprudence 457 declares:

"... Filing need not be done during business hours, but, since the law in such matters does not regard fractions of a day, may be done at an hour when the general business of the office is suspended. . . ."

It is my opinion a county clerk and recorder may receive instruments for recording at any time during the twenty-four hours and must endorse upon them the time at which received,

in accordance with Section 4805, Revised Codes of Montana, 1935. I caution Section 4805 requires such instruments be deposited in his office with the required fee.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General