

Opinion No. 30

**Veterans—Veterans' Administration
—County Clerk and Recorder—
Certified Copies—Fees.**

Held: The County Clerk and Recorder must charge veterans a fee for copies of honorable discharges, birth certificates and death certificates unless they are to be furnished for the purpose of determining eligibility for benefits made under the Veterans' Administration.

April 25, 1947

Miss Louise Replogle
County Attorney
Fergus County
Lewistown, Montana

Dear Miss Replogle:

You have submitted to this office the question whether or not the office of County Clerk and Recorder must furnish certified copies of honorable discharges, birth certificates and death certificates for veterans without charge.

Section 4917, Revised Codes of Montana, 1935, as amended by Chapter 87, Laws of 1941, provides in part that the fees of county clerks, which must be charged and collected for the use of their respective counties, are as follows:

"For a copy of any record or paper, for each folio, fifteen cents (15c) and for each certification with seal affixed fifty cents (50c) provided that in all cases where copies of any record or paper are to be certified by the county clerk and such copy is furnished to said clerk for certification, said clerk shall not make a charge nor receive a fee for the comparison of such copy, other than the fee of fifty cents (50c) for his certificate and seal."

Further, the county clerk may demand prepayment in such a case if he deems it advisable under the following provision:

"He is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until the fee for the same, as prescribed by law, is, if demanded, paid, or tendered." (Section 4809, Revised Codes of Montana, 1935).

A thorough research reveals an exception in the case of veterans on authority of Section 16, Chapter 58, Laws of 1943. This provision is as follows:

"When a copy of any public record is required by the veterans' administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans' Administration, the official custodian of such public record shall **without charge** provide the applicant for such benefits or any person acting on his behalf or the authorized representative of the veterans' administration with a certified copy of such record." (Emphasis mine).

Though this statute is clear and unambiguous, the following interpretation given in Opinion No. 94, Volume 21, Report and Official Opinions of the Attorney General, should be noted. It is as follows:

"Public officials having custody of records required by the Veterans' Bureau for the purpose of **determining eligibility for benefits made under such bureau** are authorized to furnish certified copies thereof to the applicant for such benefits, or any person acting on his behalf or the representative of such bureau, without charge." (Emphasis mine).

This holding is in line with Opinion No. 13, Volume 20, Report and Official Opinions of the Attorney General, page 18, wherein the predecessor of Section 16, Chapter 58, Laws of 1943, Section 5654.14, Revised Codes of Montana, 1935, was interpreted to hold that servicemen's dependents

would not be furnished such copies free of charge, even though it was for the purpose of dependent's allotments. The rationale used was that allotments were not paid through what is now known as the Veterans' Administration.

The purpose for which the certificate is to be used would, therefore, govern whether or not it is to be given free of charge.

It is, therefore, my opinion that the county clerk and recorder must charge veterans a fee for copies of honorable discharges, birth certificates and death certificates unless they are to be furnished for the purpose of determining eligibility for benefits made under the Veterans' Administration.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General