

Opinion No. 129

**Clerk of The District Court—
Naturalization Fees—Amount To Be
Charged—Disposition of
Naturalization Fees—General Fund.**

- Held:** 1. The fees which the clerk of the district court shall charge and receive in naturalization proceedings are those fees which are enumerated in Title 8, Section 746, U.S.C.A., Nationality Code. The clerk is not to charge, nor receive any additional fees regardless of the provisions of Section 25-210, RCM, 1947.
2. All fees which the clerk of the district court is authorized to retain from federal authorities under the provisions of the Nationality Code are to be accounted for and paid to the county treasurer, who shall then credit such fees to the general fund of the county.

December 18th, 1952.

Mr. E. R. Kahla
First Assistant Examiner
State Capitol
Helena, Montana

Dear Mr Kahla:

You have requested my official

opinion as to the disposition of fees received by the Clerk of the District Court, sitting as clerk of the Naturalization Court. In so doing, you particularly direct my attention to an apparent conflict between Sections 25-201 and 25-210, Revised Codes of Montana, 1947, and Title 8, Section 742, U. S. C. A., Nationality Code.

The Federal law, as cited above, provides:

"(a) The Clerk of each and every Naturalization Court shall charge, collect and account for the following fees:

(1) For receiving and filing a Declaration of Intention and issuing a duplicate and triplicate thereof—\$3.00.

(2) For making, filing and docketing a petition for naturalization—\$8.00 including the final hearing on such Petition if such hearing be held and a certificate of Naturalization, if the issuance of such certificate is authorized by the Naturalization Court."

Section 25-210, Revised Codes of Montana, 1947, provides:

"The Clerk of the District Court shall collect from every person to whom a final certificate of naturalization is issued, at the time the same is issued, a fee of two dollars and fifty cents; and no other fee shall be charged for naturalization papers or the record thereof."

Article I, Section 8, Constitution of the United States, provides:

"The Congress shall have power to establish a uniform rule on naturalization . . ."

Acting in conformity with this provision, Article VIII, Section 11, Constitution of Montana, declares:

"The district court shall have . . . the power of naturalization, and to issue papers therefor in all cases where they are authorized so to do by the laws of the United States." Title 8, Section 746, U. S. C. A., Nationality Code, provides:

"(a) It is hereby made a felony for any alien or other person, whether an applicant for naturalization

or citizenship, or otherwise, and whether an employee of the Government of the United States of not— (33) Knowingly to demand, charge, solicit, collect or receive or agree to charge, solicit, collect or receive any other or additional fees or money in naturalization or citizenship or other proceedings under this chapter than the fees and moneys specified in such chapter."

A thorough search of the Montana cases reveals no instance in which this problem has been presented to our Supreme Court. In *State ex rel. Newman vs. Libby*, 47 Wash. 481, 92 Pac. 350, a similar problem was decided. The naturalization court had made an order admitting Newman to citizenship. He thereupon tendered to the clerk of said court \$2.00 and demanded a certificate of naturalization. The clerk refused this demand upon the ground that the fee, therefor, as provided by state statute, was \$3.00. In granting Newman's application for a writ of mandamus to compel the clerk to issue him a certificate, the court stated, in 92 Pac. 351:

"The provisions respecting fees are as much a part of the uniform rules as other provisions of the act. The question whether Congress may require state courts to exercise federal jurisdiction may be a debatable question, and it may be settled that the federal government cannot impose burdens upon procedure generally. But these questions are not before us in this case, because when it is determined or conceded that Congress has exclusive authority to establish uniform rules of naturalization throughout the United States and has exercised that power, such rules are binding upon the state and state courts. * * *

"We conclude, therefore, that the fees fixed by Congress control in naturalization proceedings to the exclusion of state legislation."

I concur with the view expressed by the Washington Supreme Court.

One question remains: that is, how are the fees received by the clerk of the district court, sitting as clerk of the naturalization court to be disposed?

The Nationality Code (*supra*) provides:

"(c) The Clerk of any Naturalization Court shall account for and pay to the Commissioners one-half of all fees up to the sum of \$6,000.00 and all fees in excess of \$6,000.00 collected by any clerk in naturalization proceedings in any fiscal year.

* * * *

(f) The Clerk of the various naturalization courts shall pay all additional clerical forces that may be required in performing the duties imposed by this chapter upon Clerks of Court from fees retained under the provisions of this section by such Clerks in naturalization proceedings."

Section 25-201, R. C. M., 1947, states: "No county officer shall receive for his own use any fees, penalties or emoluments of any kind, except the salary as provided by law, for any official service rendered by him, but all fees, penalties and emoluments of every kind must be collected by him for the sole use of the county and must be accounted for and paid to the county treasurer . . . and shall be credited to the general fund of the county."

This problem has been the subject of previous opinions of the Attorney General. In Vol. I, Opinions of the Attorney General page 397, it was held that such fees might be retained by the clerk. Later, in view of the decision of the Supreme Court of the United States in *Mulcrevy vs. San Francisco*, 231 U. S. 669, this early opinion was reversed. See Vol. 6, Opinions of the Attorney General, page 109, wherein it was held that the fees should be accounted for to the County Treasurer.

The California court interpreted a state statute similar to Montana's section 25-201 (*supra*). Suit was brought by the county to recover fees withheld by the clerk who contended that such was authorized by the Federal Law. The court ruled for the county, declaring:

"A similar contention was made in the case of *City and County, etc., v. Mulcrevy*, 15 Cal. App. 1d, 113 Pac. 339; and in that case this court held that although the federal naturalization act authorized Mulcrevy as county clerk to retain, as against the government of the United States, one-half of the fees which he had received for services rendered in

naturalization proceedings, the disposition of such fees did not concern the federal government, and that inasmuch as they were paid to and collected by Mulcrevy in his official capacity he was compelled to account for and pay the same into the treasury of the city and county of San Francisco pursuant to certain charter provisions under which he held and conducted his office, which provided that the salary allowed and paid him should be in full compensation for all services rendered and that he should pay into the city and county treasury all moneys coming into his hands as county clerk no matter from what source derived or received.

"The Supreme Court of the United States, where the Mulcrevy case ultimately went . . . not only affirmed the judgment of this court, but . . . in the course of the opinion the court in effect said that the federal statute did not purport to deal or interfere with the relation of the state and its officers . . ."

For further authority, see: *State of Indiana vs. Killigrew*, C. C. A. Ind. 117 Fed. (2d) 863; *Henepin County vs. Ryberg*, 168 Minn. 385, 210 N. W. 105, and *Price vs. Erie County*, 221 N. Y. 260, 116 N. E. 988.

It is therefore my opinion that the fees which the clerk of the district court shall charge and receive in naturalization proceedings are those fees which are enumerated in the applicable federal statute; that is, Title 8, Section 746, U. S. C. A., Nationality Code.

It is further my opinion that the fees which the clerk of the district court is authorized to retain from the federal authorities, are to be accounted for and paid to the county treasurer who shall then credit them to the general fund in accordance with section 25-201, Revised Codes of Montana, 1947.

Very truly yours,
ARNOLD H. OLSEN
Attorney General