

Opinion No. 67

**County Clerk and Recorder—Fees—
Veterans Honorarium—Certified
Copies—Section 25-231—Section
91-4816, Revised Codes of Montana,
1947.**

Held: Such certified copies of honorable discharge certificates as are necessary in making proof of claims under the Veteran's Honorarium must be furnished by the County Clerk and Recorder free of charge.

February 15, 1952.

Mr. Robert T. Pantzer
County Attorney
Park County
Livingston, Montana

Dear Mr. Pantzer:

You have requested my opinion upon the question whether or not the County Clerk and Recorder may make a charge for furnishing certified copies of honorable discharges to veterans desiring to make proofs for the purpose of receiving payment under the Montana Veteran's Honorarium.

Some confusion with regard to the law applicable to this situation has arisen and since this reply should be of interest generally throughout the State, I believe that an official opinion thereon will be generally helpful.

Section 25-231, Revised Codes of Montana, 1947, provides, in part, that the fees of the 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."

Section 16-2915, Revised Codes of Montana, 1947, provides with reference to the duties of the County Clerk:

"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."

An exception to the above cited law is set forth in Section 91-4816, Revised Codes of Montana, 1947, with specific reference to copies of public records required by the Veterans Administration. This exception was ruled on in Opinion No. 30, Volume 22, Opinions of the Attorney General, where it was held that the purpose for which the certificate is to be used would govern whether or not it was to be given free of charge.

With reference to the Veteran's Honorarium, Section 9 thereof states:

"The Attorney General, the State Director of the Veterans' Welfare Commission, and the employees of said Commission, and all other state, and all county, officers shall render without charge all assistance possible to the Board of Examiners in the administration of this Law, and to applicants for payment in the preparation of applications and making proof thereunder." (emphasis supplied)

While the honorarium by its terms does not require a certified copy of an honorable discharge, Section 2 of the bill prohibits payment under the honorarium law to any person who was dishonorably discharged, and not by proper authority restored to an honorable status, and Section 8 provides that the Board of Examiners shall adopt necessary rules and regulations for the administration of the act and for the establishment of the forms of proof necessary to establish claims with reasonable certainty.

The Board of Examiners has, by resolution, adopted a rule requiring the furnishing of a certified copy of the applicant's honorable discharge, if he has been discharged from the service.

It is, therefore, my opinion that the County Clerk and Recorder's office is required to furnish without charge such certified copies of the veteran's honorable discharge as are necessary in making proof of such honorable discharge status for purposes of receiving benefits under the Veteran's Honorarium Law.

Very truly yours,
ARNOLD H. OLSEN
Attorney General