

Opinion No. 109.**Stenographer's Fee—Trial Fee—Trial De Novo—Statutory.**

HELD: The stenographer's fee must be collected at the beginning of each trial of an issue of fact.

December 20, 1954.

Mr. E. J. Donnelly
Clerk of Court
Granite County
Philipsburg, Montana

Dear Mr. Donnelly:

Your recent request for an official opinion relative to stenographers' fees is hereby acknowledged.

The factual situation as related in your request is herein reiterated:

At the beginning of the trial of a civil action, the statutory stenographer's fee of \$3.00 was collected from each of the parties to the action; the jury disagreed and the action was re-tried at a later jury term.

Your question is as follows:

"Does the stenographer's fee, which was paid at the first trial, cover his services up to the entry of judgment in the second trial or is the second trial to be considered as one de novo with an additional stenographer's fee to be collected by the clerk?"

Section 93-1905, R. C. M., 1947, states as follows:

"In every issue of fact in civil actions tried before the court or jury, before the trial commences, there must be paid into the hands of the Clerk of the Court, by each party to the suit, the sum of three dollars, which sum must be paid by said clerk into the treasury of the county where the cause is tried, to be applied upon the payment of the salary of the stenographer, and the prevailing party may have the amount so paid by him taxed in his bill of costs as proper disbursements." (Emphasis supplied.)

The above statute is the basis of all authority for collecting this trial fee and, as stated in the statute, Section 93-1905, supra, the fee is collected before

the trial commences. A retrial of the same issue of fact is one de novo for the purpose of an additional stenographer's fee, for as it was stated in *Inkster v. Carver*, 17 Mich. 64:

"The stenographer's fee is a trial fee, and a trial is had where a cause is at issue on issues of fact and is placed on the calendar and is dismissed where the jury disagrees. The trial need not result in a verdict."

The above-quoted case is similar to the facts presented in your question and is authority for the proposition that the statutory stenographer's fee of \$3.00 must be collected before a retrial of the same issues of fact.

Section 93-1905, supra, is very clear and provides for the payment of the stenographer's fees. In *State v. Board of County Commrs. et al.*, 104 Mont. 21, 26, 64 Pac. (2d) 1060, the Supreme Court stated relative to statutory construction:

"It is not allowable to interpret what has no need of interpretation, or, when the words have a definite and precise meaning, to go elsewhere in search of conjecture in order to restrict or extend their meaning. Statutes should be read and understood according to the natural and most obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending their operation."

"* * *"

"In construing a statute we are required to give to the words employed their ordinary meaning, unless it is made apparent from their character or the context or subject that a different meaning was intended."

The statute being clear, and with further cited case law authority, it is my opinion that the stenographer's fee must be collected at the beginning of each trial of an issue of fact.