

Opinion No. 50**Counties — Fees — Clerk and Recorder — Judicial Determination of Birth Date**

HELD: No fee is collectible by the county clerk and recorder for filing the copy of a judicial determination of date of birth required by Section 93-101-4, R.C.M., 1947.

December 28, 1955.

Mr. John J. Cavan, Jr.
County Attorney
Yellowstone County
Billings, Montana

Dear Mr. Cavan:

You have requested my opinion upon the following question:

Must the county pay to the clerk and recorder of the county a filing

fee for filing a copy of the judgment in an action brought for the judicial determination of a birth date, as provided by Chapter 101, Title 93, Revised Codes of Montana, 1947, as amended?

Section 93-101-4, R.C.M., 1947, provides:

"Fees — Certification of Judgment. The petitioner, upon the filing of the petition must pay to the clerk of court a fee of one dollar (\$1.00), and upon the entry of judgment the applicant must pay to the clerk of court an additional fee of one dollar (\$1.00). No charge shall be made for posting of the notices required hereunder. If the applicant shall provide a true copy of the judgment rendered, then the clerk of court must certify the same without additional charge. The clerk of the court shall certify to two copies of such judgment, and file one with the bureau of vital statistics, state board of health, Helena, Montana, and the other with the county clerk and recorder of the county in which the judgment was obtained." (Emphasis supplied.)

Your question concerns only the filing of the copy of the judgment which is transmitted to the county clerk and recorder for filing by the clerk of court.

Section 25-231, R.C.M., 1947, provides that the fees of county clerks "must be charged and collected for the use of their respective counties." In such a case, a payment by the county from its treasury of a fee which must be collected for the benefit of the county and placed in the county treasury appears to be a useless act—at best a mere transfer of county funds from one pocket to another. Furthermore, Section 25-209, R.C.M., 1947, provides that:

"No fees must be charged the state, or any county, or any subdivision thereof, or any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees."

This statute relieves states, counties and other governmental subdivisions from the payment of fees

for the recordation of papers in the county clerk and recorder's office (Crow Creek Irr. Dist. v. Crittenden, 71 Mont. 66, 227 Pac. 63).

There is no doubt that in keeping vital statistics the county and the state are performing a proper governmental function. The present law pertaining to vital statistics, Section 69-501 through Section 69-539, R.C.M., 1947, was passed as Chapter 44, Laws of 1943, under the Title:

"An Act to Secure Complete Data Pertaining to Births, Deaths, Stillbirths, Legitimations, Adoptions, Marriages, Divorces and Annulments of Marriage; to Authorize and Regulate the Use of Vital Statistics Records as Evidence; Define Terms, Providing Penalties, Publication of Regulation and Appointment of Registrars; to Authorize the State Board of Health to Make Regulations for the Enforcement of This Act, and Repealing Sections 2515 to 2539, Both Inclusive, of the Revised Codes of Montana of 1935." (Emphasis Supplied.)

This measure was a companion act to Chapter 16, Laws of 1943, (now Sections 93-101-1 to 93-101-6, R.C.M., 1947). Sections 69-501 et seq. provide for the gathering of complete information upon all births in this state and other vital information pertaining to the residents of the state. In providing for filing of judgments of determination of birth date, Section 93-101-4, supra, directs that the public birth records shall be completed by the addition of the information contained in these judgments.

Since in filing copies of judgments of judicial determination of dates of birth the county clerk and recorder is performing a service for the county, and not for the individual whose birth date has been determined, Section 25-209, supra, applies and no fee is payable.

It is therefore my opinion that no fee is collectible by the county clerk and recorder for filing the copy of the judgment of a judicial determination of date of birth required by Section 93-101-4, R.C.M., 1947.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.