

Opinion No. 90

**County Clerks —
Lis Pendens — Fees**

HELD: The County Clerk and Recorder may only charge for filing and indexing a lis pendens a fee of fifty cents.

November 10, 1956

Mr. Russell K. Fillner
County Attorney
Rosebud County
Forsyth, Montana

Dear Mr. Fillner:

The following is in response to your request for an opinion relative to the lis pendens fee to be charged and collected by the County Clerk and Recorder. You have asked a clarifying opinion of Section 25-231, R.C.M., 1947, FEES OF COUNTY CLERKS, and whether, under that section, he may charge a ten cent fee for making each entry in the "Notice of Actions" index.

There is no requirement contained in Section 16-2902, R.C.M., 1947, that a lis pendens be recorded. There is, however, a requirement that the clerk keep an index of lis pendens filed. Section 16-2905, R.C.M., 1947, provides in part as follows:

"* * *

18. An index of notices of the pendency of actions, labeled 'Notices of actions,' each page divided into three columns, headed, respectively: 'Parties to actions,' 'Notices, when recorded,' 'When filed';

* * *"

The general lis pendens statute, Section 93-3005, R.C.M., 1947, a constructive notice statute, mentions only filing and is silent as to recording.

Examination of Section 25-231, R.C.M., 1947, directs collection of the ten cent index entry fee "For recording and indexing each instrument of writing allowed by law to be recorded; except as hereinafter provided" and "For recording and indexing each real estate mortgage, assignment, renewal, or release of real estate mortgage.

It is apparent that the first part of Section 25-231 has some relational arrangement and is not like the remainder a disconnected enumeration of fees to be charged.

The fees based on the folio and for entry in index and certification relate to and are connected with the recording and indexing provisions of "writing allowed by law to be recorded" and "real estate mortgage, assignment, renewal, etc." respectively.

One of the provisions of Section 25-231, R.C.M., 1947, reads as follows:

"For filing or recording or indexing any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service."

As heretofore pointed out, a lis pendens is filed and indexed but not recorded. A "similar service" mentioned in that same section is a filing fee of fifty cents for "filing and indexing each chattel mortgage, affidavit of renewal, etc." The services that a clerk performs for filing and indexing a lis pendens and for filing and indexing and indexing each chattel mortgage, affidavit of renewal, etc., are the same and involve no appreciable difference in labor and therefore should demand of no greater fee.

Therefore, it is my opinion that the county clerk should charge for filing and indexing a lis pendens a fee of fifty cents only and no more.

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