

This opinion is issued in lieu of Volume 36, Opinions of the Attorney General, Opinion No. 27, dated October 3, 1975. Because a relevant portion of that opinion was inadvertently omitted during publication, the same is hereby superseded.

**VOLUME NO. 36****Opinion No. 27**

**MOTOR VEHICLES — Registration — Fees — Transfer of title and license plates; Sections 32-3701, 53-106, 53-114, 53-122, R.C.M. 1947.**

**HELD: Upon a transfer of title and license plates to a newly acquired vehicle, the county treasurer must collect from the applicant the registration fees provided for in sections 53-122 and 53-106.**

November 5, 1975

Mr. Malcolm MacCalman, Chief  
Registrar's Bureau  
Motor Vehicles Division  
Deer Lodge, Montana 59722

Dear Mr. MacCalman:

You have requested my opinion on the following question:

Upon a transfer of title and license plates to a newly acquired vehicle, must the county treasurer collect from the applicant the registration fees provided for in sections 53-122 and 53-106?

Apparently some county treasurers are refusing to charge the \$5.00 or \$10.00 registration fees under section 53-122 and the additional \$1.00 registration fee under section 53-106, on the ground the applicant has previously paid for his license plates. However, the law leaves no room for such discretion. Section 53-114 provides:

(3) Whoever files an application for registration or **reregistration** of a motor vehicle. . .**shall** upon the filing of said application (1) **pay to the county treasurer the registration fee, as provided in section 53-122.** . . (Emphasis added)

Section 53-122 provides:

Registration or license fees **shall be paid** upon registration or **reregistration** of motor vehicles. . .as follows:

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars (\$5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks ten dollars (\$10.00); (Emphasis added)

Section 53-106 further provides:

(2). . .An additional fee of one dollar (\$1.00) per year for **each** registration of a vehicle **shall be added** to the registration fee. (Emphasis added)

Presence of the terms "re-registration" and "each registration" in these statutes manifests the legislature's intent that registration fees be imposed upon every registration of a motor vehicle. The word "shall", of course, is mandatory and compelling in such a context. See **Abshire v. School District No. 1 of Silver Bow County**, I would thus conclude the registration fees in sections 53-106 and 53-122 must be paid each time a vehicle is registered.

This conclusion is partially inconsistent with Vol. 33 Opinions of the Attorney General, Opinion No. 5 (1969). I held there that the parenthetical expression found in section 53-114(3)—“(unless the same shall have been theretofore paid for said year)” —precluded payment of registration fees as well as personal property taxes and the sales tax on new motor vehicles if such payments had previously been made during the registration year. But it is now apparent that the just-quoted language refers only to personal property taxes and the sales tax.

Incidentally, the belief that registration or license fees cover the costs of manufacturing and delivering the license plates is a mistaken one. Such costs are absorbed by **fees other than license fees**. Section 53-122, last paragraph. Registration fees must be credited in their entirety to the county motor vehicle fund (section 32-3701) and may be likened to a tax; however, they have not been so denominated by the legislature.

**THEREFORE, IT IS MY OPINION:**

Upon a transfer of title and license plates to a newly acquired vehicle, the county treasurer must collect from the applicant the registration fees provided for in sections 53-122 and 53-106.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General