

VOLUME NO. 37

OPINION NO. 111

DISTRICT COURTS - filing fees; INHERITANCE - filing fees;  
INHERITANCE - domiciliary foreign personal representative;  
REVISED CODES OF MONTANA, 1947 - Sections 91A-4-201,  
25-232(n).

HELD: Section 25-232, R.C.M. 1947, does not authorize the Clerk of the District Court to charge a domiciliary foreign personal representative for filing authenticated copies of his appointment, any official bond and an inventory and appraisal of the property of the non-resident decedent located in the state under section 94A-4-204, R.C.M. 1947.

2 February 1978

J. Fred Bourdeau, Esq.  
Cascade County Attorney  
Cascade County Courthouse  
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion on the following question:

Is the domiciliary foreign personal representative of the estate of a non-resident decedent who files authenticated copies of appointment, any official bonds and an inventory and appraisal of the property located in this state, required to pay the thirty five dollar filing fee under section 25-232(n)?

Section 25-232(1) states:

The clerk shall collect the following fees:

(n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$35, which includes the fee for the filing of a will for probate.

Section 91A-4-201 states in subsection (1):

The domiciliary foreign personal representative of the estate of a non-resident decedent who wishes to receive payment and delivery as described in section 91A-4-204 or to exercise the powers over assets described in section 91A-4-207 shall file in duplicate with a district court in this state in a county in which property belonging to the decedent is located authenticated copies of his appointment and any official bond he has given, an inventory and appraisal of the property of the non-resident decedent located in this state,...

The filing of copies of the appointment of the foreign personal representative under 91A-4-201 is not an application for a probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, under section 25-232(n). 35 OP. ATT'Y GEN. NO. 94, held that a clerk of court may not charge a fee for services rendered in the absence of specific statutory authority. State ex rel. Atlantic Peninsula Holding Company v. Butler, 121 Florida II7, 164 So. 128 (1935), State ex rel. Baker v. District Court, 24 Mont. 425, 62 Pac. 688 (1900).

There is no statutory authority allowing the clerk of court to charge a domiciliary foreign representative for filing authenticated copies of his appointment and documents incident thereto.

THEREFORE, IT IS MY OPINION:

Section 25-232, R.C.M. 1947, does not authorize the Clerk of the District Court to charge a domiciliary foreign personal representative for filing authenticated copies of his appointment, any official bond and an inventory and appraisal of the property of the non-resident decedent located in the state under section 91A-4-204, R.C.M. 1947.

Very truly yours,

MIKE GREELY  
Attorney General