

VOLUME NO. 37

OPINION NO. 146

FEES - Department of Natural Resources and Conservation not required to pay statutory fees of county clerk and recorder nor clerk of district court; cities and counties are required to pay fees prescribed by Board of Natural Resources and Conservation for filing water right applications; REVISED CODES OF MONTANA, 1947 - Sections 25-209, 25-231, 25-232, 89-868(1), 89-870, 89-886(3).

HELD: 1. The Department of Natural Resources and Conservation is not required to pay the statutory fees of the county clerk and recorder for recording water use permits.

2. The Department of Natural Resources and Conservation is not required to pay the statutory fees of the clerk of the district court for furnishing copies of decrees affecting water rights.
3. Cities and counties are required to pay the fees prescribed by the Board of Natural Resources and Conservation for filing water right applications.

25 May, 1978

Donald D. MacIntyre, Esq.
Chief Legal Counsel
Department of Natural Resources
and Conservation
32 South Ewing
Helena, Montana 59601

Dear Mr. MacIntyre:

You have requested my opinion concerning the payment of fees by and to the Department of Natural Resources and Conservation pursuant to the 1973 Water Use Act.

Section 89-886(3), R.C.M. 1947, requires the Department to send each original water use permit to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation. The department is required to establish a centralized system of existing rights. Section 89-870, R.C.M. 1947. The data to be gathered by the department includes court decrees adjudicating water rights and records of declaration filed under the ground water code.

The first two questions presented in your request are as follows:

1. Whether the department must pay the statutory fees of the county clerk and recorder for recording the water use permits?
2. Whether the department must pay the statutory fees of the clerk of the district court for furnishing copies of decrees affecting water rights?

The fees of county officers are established by statute and are found in Title 25, chapter 2, R.C.M. 1947. The fees of the county clerk and recorder and the clerk of the district court are found at sections 25-231 and 25-232, respectively.

Within this same chapter is section 25-209, which states:

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

Consequently, the county officers whose fees are set by Title 25, chapter 2 are prohibited from collecting fees from the state, any county, or political subdivision thereof, or any public officer acting therefor. The department, therefore, is not required to pay the fees of the county clerk and recorder to have water use permits recorded, nor must the department pay the fees of the clerk of the district court for furnishing a copy of any decree affecting water rights.

A third question presented in your request concerns fees set by the Board of Natural Resources and Conservation for the filing of applications with the department. The question you have presented is whether cities and counties are required to pay the fees prescribed by the board for processing a water right application.

Section 89-868(1) grants to the board the power to prescribe fees for any public service rendered by the department under the Water Use Act, including fees for the filing of applications. The Legislature did not limit this grant of power by exempting cities and counties from being assessed these fees if prescribed by the board. Nor does the board's rules which set the fees for filing an application exempt cities and counties. MAC 36-2.14R(1)-S14020.

It should be noted that section 25-209 would not exempt cities and counties from the fees prescribed by the board for filing applications. Section 25-209 is found within Title 25, chapter 2, R.C.M. 1947, which addresses fees of county officers. It is an elementary rule of statutory construction that all sections of an act relating to the same subject matter should be considered together and not each by itself unless to do so would be plainly contrary to legislative intent. Sutherland, Statutory Construction, section 47.06 (1973). The fees prescribed by the board cannot be classified as fees of county officers and cannot be controlled by section 25-209.

THEREFORE, IT IS MY OPINION:

1. The Department of Natural Resources and Conservation is not required to pay the statutory fees of the county clerk and recorder for recording water use permits.
2. The Department of Natural Resources and Conservation is not required to pay the statutory fees of the clerk of the district court for furnishing copies of decrees affecting water rights.
3. Cities and counties are required to pay the fees prescribed by the Board of Natural Resources and Conservation for filing water right applications.

Very truly yours,

MIKE GREELY
Attorney General