

VOLUME NO. 38

OPINION NO. 36

STATE AGENCIES - Liability for county recording and copying fees;

COUNTIES - Authority of clerk and recorder to collect fees for recording and copying;

MONTANA CODE ANNOTATED - Sections 7-4-2516, 7-4-2631;

REVISED CODES OF MONTANA, 1947 - Sections 25-209, 25-231;

OPINION OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 146.

- HELD: 1. The Department of Natural Resources and Conservation must pay the fees set forth in section 7-4-2631, MCA, for recording of water use permits.
2. A county clerk and recorder may not collect a fee from the Department of Natural Resources and Conservation for the copying of documents on file with the county.

21 August 1979

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 on the following questions:

1. May a county clerk and recorder collect a fee from the Department of Natural Resources and Conservation (hereinafter "the Department") for the recording of water use permits?
2. May a county clerk and recorder collect a fee from the Department for the copying of records on file?

In 37 Op. Att'y Gen. No. 146 (1978), I held that the collection of these fees from the Department was prohibited by section 7-4-2516, MCA (section 25-209, R.C.M. 1947). Your inquiry deals with the impact on that ruling of the enactment of House Bill 490, 1979 Montana Laws, chapter 487, (hereinafter "Chapter 487") by the 1979 Legislature.

Chapter 487 amends section 7-4-2631, MCA, which deals with the fees charged by the county clerk for recording, filing, indexing, and copying documents. The amendment which pertains to your inquiry reads as follows:

(2) State agencies submitting documents for recording shall pay the recording fees provided for in this section. These fees may be paid on a monthly basis.

(Emphasis added.)

Section 7-4-2631, MCA, provides fees for the recording of virtually every document which by law may be recorded, including water use permits filed under the ground water code. Chapter 487 expressly subjects state agencies to the recording fees set forth in section 7-6-2431, MCA, legislatively overruling the contrary opinion in 37 Op. Att'y Gen. No. 146 (1978).

You also inquire whether Chapter 487 requires the Department to pay the costs of copying documents on file with a county clerk and recorder. I conclude that it does not. The general rule regarding payment of fees by state agencies is set forth in section 7-4-2516, MCA (section 25-209, R.C.M. 1947):

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

Chapter 487 amends this general rule by excepting from its operation those "recording fees" set forth in section 7-4-2631, MCA. As noted above, that section sets forth the fees collected by the county clerk, not only for recording, but also for filing, indexing, and copying of documents. The fact that the Legislature specified "recording fees," rather than subjecting the state to payment of all fees set forth in that section, discloses a legislative intent to alter the general rules set forth in section 7-4-2516, MCA, as to recording fees only, and not as to copying fees.

THEREFORE, IT IS MY OPINION:

1. The Department of Natural Resources and Conservation must pay the fees set forth in section 7-4-2631, MCA, for recording of water use permits.
2. A county clerk and recorder may not collect a fee from the Department of Natural Resources and Conservation for the copying of documents on file with the county.

Very truly yours,

MIKE GREELY
Attorney General