

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 64

CLERK AND RECORDER - Fees county clerk must charge for multiple indexing under section 7-4-2631(k), MCA;
COUNTY OFFICIALS - Statutory fees county clerk and recorder must charge for multiple indexing;
FEES - Definition and application of term "multiple indexing" as affecting fees charged by county clerk under section 7-4-2631(k), MCA;
MONTANA CODE ANNOTATED - Sections 7-4-2619, 7-4-2620, 7-4-2631.

HELD: The charge to be computed for multiple entries in several indexes under section 7-4-2631(k), MCA, is 50 cents per index in excess of the first index contained in the document regardless of the number of entries made in the index.

22 June 1982

Robert L. Deschamps, III, Esq.
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion on the following question:

Under section 7-4-2631(k), MCA, how are charges to be computed for documents which require multiple entries in several indexes?

Section 7-4-2631, MCA, lists the fees county clerks must charge for recording documents. Your question relates to the term "multiple indexing" as it is used in this subsection. Section 7-4-2631, MCA, provides that the county clerk must charge:

(k) for documents requiring multiple indexing (including but not limited to mortgages; releases; deeds; certificates of location; affidavits of annual labor on mining claims; assignments of leases; assignments of mortgages; oil, gas, and mineral leases; release of oil, gas, and mineral leases; assignments of overriding royalties;

OPINIONS OF THE ATTORNEY GENERAL

executions; lis pendens; attachments; and all liens), 50 cents per index in excess of the first index contained in a single document....

The indexes a county clerk is required to keep are listed in section 7-4-2619, MCA. Each index is to be kept separately but two or more indexes may be placed in the same volume. § 7-4-2620, MCA. You indicate that the Missoula County practice is to charge for each entry made in the index while other counties charge only 50 cents per extra index regardless of the number of entries made in each index. A number of other counties do not charge per index but rather per volume.

It is well settled that in construing a statute the intent of the Legislature controls and must first be determined from the plain meaning of the words contained in the statute. State ex rel. Zander v. District Court, 181 Mont. 454, 591 P.2d 565 (1979). Applying this rule to section 7-4-2631(k), MCA, it is clear that the term "multiple indexing" refers to entries which must be made in more than one index. The subsection renders a charge of "50 cents per index in excess of the first index contained in a single document." The fact that several entries must be made in each index does not change the plain and ordinary meaning of the phrase "per index."

You indicated that some of the examples contained in subsection (k) require recordation in only one index and that this fact supports Missoula County's charge of 50 cents per entry per index. The legislative history on this subsection is sparse and there is no discussion on this point. However, without contrary legislative intent as indicated by the history, the plain meaning rule controls and thus the "per index" language governs. Shannon v. Keller, 37 St. Rptr. 1079, 612 P.2d 1293 (1980).

THEREFORE, IT IS MY OPINION:

The charge to be computed for multiple entries in several indexes under section 7-4-2631(k), MCA, is 50 cents per index in excess of the first index contained in the document regardless of the number of entries made in the index.

Very truly yours,

MIKE GREELY
Attorney General