

COUNTIES - Fees to be charged by clerk and recorder for recording documents for mining claims;

FEES - For recording documents for mining claims by mechanical means;

MONTANA CODE ANNOTATED - Sections 7-4-2631, 7-4-2631(1)(a), 7-4-2631(1)(b), 7-4-2631(1)(n), 7-4-2632;

REVISED CODES OF MONTANA, 1947 - Section 25-231;

SESSION LAWS OF 1955 - Chapter 202, section 1.

HELD: When recording documents for mining claims by mechanical means, the clerk and recorder is to charge only the fee prescribed by section 7-4-2632, MCA.

20 July 1984

Mike McGrath  
Lewis and Clark County Attorney  
Lewis and Clark County Courthouse  
Helena MT 59623

Dear Mr. McGrath:

You have requested my opinion on the following question:

When recording documents for mining claims by photographic or similar process, is the clerk and recorder to charge the fee set forth in section 7-4-2631(1)(a) and (b), MCA, or section 7-4-2632, MCA, or both?

Section 7-4-2631(1)(a) and (b), MCA, provides:

Fees of county clerk. (1) The county clerks must charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer

mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, \$6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, \$3; and

(ii) for each additional mining claim included in it, 50 cents;

Section 7-4-2632, MCA, provides:

Fee when recording done by mechanical means. Where recording is done by photographic or similar process, the county clerk and recorder shall charge \$2.50 for each page or fraction of a page of the instrument for recording.

Both of the provisions appear to apply to recording mining documents by mechanical means. An ambiguity presents itself because the statutes fail to instruct which fees should be charged in the situation you describe in your request. This ambiguity necessitates statutory construction to reconcile these statutes.

The fundamental rule of statutory construction is that the intention of the Legislature controls. Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660 (1968). In my opinion, the legislative intent, revealed through the history of these two sections, resolves the ambiguity.

Section 7-4-2632, MCA, was originally enacted as an amendatory addition to the present section 7-4-2631, MCA. In 1955, section 25-231, R.C.M. 1947, was amended to include:

[P]rovided that in all cases where recording is done by photographic or similar process the fee to be charged by the county clerk and recorder for filing and indexing the same shall be one dollar (\$1.00) for each page or fraction thereof of said instrument.

1955 Mont. Laws, ch. 202, § 1.

It is clear that in 1955 the Legislature intended that the fee in this provision be the only fee charged when recording was done by photographic or similar process. The present section 7-4-2632, MCA, is the same law in substance as the 1955 enactment. Therefore, the intent of the 1955 Legislature should control the present construction. State ex rel. Montgomery Ward v. District Court, 115 Mont. 521, 146 P.2d 1012, 1014 (1944). The ambiguity which now exists was created by the recodification in 1978, when the present section 7-4-2632, MCA, was separated from its parent statute. I cannot construe legislative intent to change the effect of these statutes by recodification without a clear indication of such intent by the Legislature. Missoula County Free High School v. Smith, 91 Mont. 419, 8 P.2d 800 (1932).

On this basis I conclude that when mining documents are recorded by mechanical means, the fee in section 7-4-2632, MCA, is the only fee to be charged. My conclusion is supported by the requirement that both of the sections be read together and construed to give effect to each. Corwin v. Brieswanger, 126 Mont. 337, 251 P.2d 252 (1953). Furthermore, section 7-4-2631(1)(n), MCA, indicates that section 7-4-2632, MCA, is an alternative rather than an additional fee:

[f]or filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service. [Emphasis added.]

The word "or" in a statute generally indicates alternatives and requires that the alternative provisions be treated separately. Azure v. Morton, 514 F.2d 897 (9th Cir. 1975).

THEREFORE, IT IS MY OPINION:

When recording documents for mining claims by mechanical means, the clerk and recorder is to charge only the fee prescribed by section 7-4-2632, MCA.

Very truly yours,

MIKE GREELY  
Attorney General