

VOLUME NO. 40

OPINION NO. 62

FEES - Filing fee for a declaration of invalidity of a marriage;

MARRIAGE AND DIVORCE - Filing fee for a declaration of invalidity of a marriage;

MONTANA CODE ANNOTATED - Title 40, chapter 1, part 4; Title 40, chapter 4, parts 1, 2; sections 25-1-201(1)(a), 40-1-102, 40-4-104.

HELD: The filing fee payable to the district court clerk for a declaration of invalidity of a marriage is twenty-five dollars.

16 August 1984

Harold F. Hanser
Yellowstone County Attorney
P.O. Box 35025
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Dear Mr. Hanser:

You have asked my opinion on the following question:

What is the filing fee payable to the district court clerk for a declaration of invalidity of a marriage?

Section 25-1-201, MCA, sets forth the schedule of fees to be collected by district court clerks. The statute provides, in pertinent part:

(1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, \$25; for filing a complaint in intervention, from the intervenor, \$25; and for filing a petition for dissolution of marriage, an additional fee of \$25. [Emphasis added.]

Your question concerns whether the above-underlined language pertaining to dissolutions of marriage applies as well to declarations of invalidity, thereby resulting in imposition of a \$50 filing fee, with the first \$25 collected at the commencement of the action and the second \$25 representing the additional fee.

Montana law treats declarations of invalidity and dissolutions of marriage as separate matters. Declarations of invalidity are dealt with in Title 40, chapter 1, part 4, MCA. Decrees declaring a marriage invalid may be entered where parties lacked the requisite mental or physical capacity at the time of the marriage, where a party was underage and lacked parental or judicial approval of the marriage, or where the marriage was prohibited by law because a particular familial relationship existed between the parties to the marriage. See §§ 40-1-401, 40-1-402, MCA. A declaration of invalidity may be sought by parties other than the parties to the marriage. § 40-1-402(2)(e) and (3), MCA.

Dissolutions of marriage, on the other hand, are governed by Title 40, chapter 4, parts 1 and 2, MCA. A dissolution of marriage requires a finding that the marriage is irretrievably broken due to separation of or discord between the parties. See § 40-4-104, MCA. A dissolution, by contrast with a declaration of invalidity, is an action instituted to sever a valid marriage relation, rather than a judicial determination

that because of some disability or defect which existed at the time of the marriage ceremony, no valid marriage relation ever existed between the parties. Dissolutions, unlike declarations of invalidity, may not be sought by parties other than the parties to the marriage. Generally speaking, the two actions are dissimilar in that a dissolution is a divorce action, while a declaration of invalidity is an annulment of a marriage that was never valid.

There is no indication in either the language of the statute or its legislative history that the additional fee imposed for filing a petition for dissolution of marriage was meant to apply to declarations of invalidity. A cardinal principle of statutory construction is that when the language of the statute is plain and unambiguous the language must speak for itself; one interpreting the statute may neither insert what has been omitted nor omit what has been inserted. Reese v. Reese, 38 St. Rptr. 2157, 2159, 637 P.2d 1183, 1185 (1981).

The imposition of the \$25 fee for a dissolution of marriage, to be paid in addition to the \$25 fee payable at the commencement of the action, was added to section 25-1-201, MCA, by chapter 709, section 11 (House Bill 400) in 1983. Chapter 709 was entitled "An Act Creating a Displaced Homemaker Program and Providing for an Appropriation; Amending Section 25-1-201, MCA; and Providing an Effective Date." The intent of the act was to provide aid to homemakers who had found themselves displaced on account of dissolution of marriage, death or disability of spouse, or other loss of family income. See ch. 709, preamble and § 2. According to discussions held in 1983 by the Senate Finance and Claims Committee and the House Appropriations Committee, the additional \$25 fee was imposed for the purpose of covering the costs of the displaced homemaker program. The testimony of Senator Pete Story indicates that the fee was to be charged to the person filing for divorce regardless of whether the filer was a man or a woman. Minutes, Senate Finance and Claims Committee, April 8, 1983, discussion of House Bill 400. There is no mention in the legislative minutes of declarations of invalidity.

For the aforementioned reasons, I conclude that the additional \$25 filing fee for a dissolution of marriage does not apply to a declaration of invalidity; only the

filing fee for commencing an action is applicable. My conclusion is unaffected by whether the invalidation decree is made retroactive or not, pursuant to section 40-1-402(5), MCA.

THEREFORE, IT IS MY OPINION:

The filing fee payable to the district court clerk for a declaration of invalidity of a marriage is twenty-five dollars.

Very truly yours,

MIKE GREELY
Attorney General