

47 Op. Att'y Gen. No. 3

CLERKS - Authority of clerk of district court to charge nonparty state agencies for copying and certification of district court records;
COUNTY OFFICERS AND EMPLOYEES - Authority of clerk of district court to charge nonparty state agencies for copying and certification of district court records;
COURTS - Authority of clerk of district court to charge nonparty state agencies for copying and certification of district court records;
FEES - Authority of clerk of district court to charge nonparty state agencies for copying and certification of district court records;
MONTANA CODE ANNOTATED - Sections 2-6-101, -102, 7-4-2511(1), -2516, 25-1-201, 25-10-403, -405;
MONTANA CODES ANNOTATED 1895 - Political Code sections 4606, 4612;
MONTANA LAWS OF 1991 - Chapter 466.

HELD:

The clerk of district court is not authorized to charge a nonparty state agency for copies and certification of public district court records.

May 23, 1997

Mr. Brant L. Light
Cascade County Attorney
121 Fourth Street North
Great Falls, MT 59401

Dear Mr. Light:

You have asked my opinion on the following question:

Is the clerk of district court entitled to charge a nonparty state agency for copies and certification of public district court records?

Your question has arisen because officials of the Montana Department of Transportation have expressed concern to Cascade County officials about certain practices of the Cascade County Clerk of District Court. The Clerk charges the Department, which is not a party to the cases in question, copying fees when

the Department requests copies of district court pleadings and judgments affecting public rights-of-way, as it routinely does.

In answering your question, I look first to the statutes establishing the nature of court records. Montana law clearly establishes court records as "public writings." Mont. Code Ann. § 2-6-101. As such:

(1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103 or 22-3-807 and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

Mont. Code Ann. § 2-6-102.

Examining the statutes controlling access to and fees for copying court documents, I find the following pertinent language:

Each salaried county officer must charge and collect . . . *all fees now or hereafter allowed by law*, paid or chargeable in all cases, *except as provided in 25-10-403*. Mont. Code Ann. § 7-4-2511(1) (emphasis added). This statute is limited in two ways: by qualifying language ("allowed by law"), and by an exception ("except as provided in 25-10-403"). These two limitations on the statute are important and will be discussed further below. It is clear, then, that access to and fees for copying public court records are not absolute and are controlled by statute.

The fees "allowed by law" for the clerk of district court are enumerated in Montana Code Annotated § 25-1-201. The collection of these fees is mandatory, and fees for preparing copies and for certification of documents (the fees at issue here) are specified. Mont. Code Ann. § 25-1-201(1)(d), (e).

However, there is a statute that limits the fees that are "allowed by law" to be collected:

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

Mont. Code Ann. § 7-4-2516. Both this statute and § 7-4-2511, which requires county officers to charge and collect fees allowed by law, were in the Political Code of 1895 (§§ 4612 and 4606 respectively). This is a clear indication that the exemption of the state and counties from paying fees was well in the contemplation of the legislature when it required the collection of fees. *Belote v. Bakken*, 139 Mont. 43, 46, 359 P.2d 372, 373 (1961). Agencies of state and county government are thus as a general rule exempt from paying official fees.

However, at this point, it is important to emphasize that your question is addressed specifically to *nonparty* state agencies who request copies and certification of district court records. This is because, in 1991, the Montana legislature amended another statute which deals with a specific type of official fee that litigating governmental agencies may be charged, Montana Code Annotated § 25-10-405. The statute enacting this amendment provided:

Section 1. Section 25-10-405, MCA, is amended to read:

"25-10-405. Governmental entities not required to prepay fees -- exceptions. The state, a county, a municipality, or any subdivision thereof or any officer *when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof* is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except the fee under 25-1-201(1)(p) for filing a motion for substitution of a judge *and all fees for photocopies, postage and handling, authentications, and record searches.*

1991 Mont. Laws, ch. 466 (emphasis added). A 1993 amendment added "certifications" to the list of exceptions.

Your letter states that the Cascade County Clerk of District Court contends that this amendment authorizes the collection of copying and certification fees from nonparty state agencies. However, I find no evidence that the legislature intended to do more than authorize the collection of fees from the state, a county, or a municipality that was a party to an action. The statutory language clearly limits the reach of § 25-10-405 to cases in which the agency is "prosecuting or defending an action." By its terms, it can have no effect in cases in which the agency is not a party to the action. Such cases are left to the general law found in Montana Code Annotated § 7-4-2516, which clearly exempts the State and its agencies from payment of fees.

The legislature is presumed to be aware when it acts of all existing laws, *Blythe v. Radiometer America*, 262 Mont. 464, 475, 866 P.2d 218, 225 (1993). In this case I am presented, on the one hand, with statutory authority forbidding the charging of fees to state or county officials. On the other hand, Montana Code Annotated § 25-10-405 expanded the group of litigation *parties* who must pay certain fees to the clerks of district court to include government agencies. By its terms, this statute does not apply to nonparties. Your inquiry is specifically directed to nonparties, and the answer is therefore clear.

THEREFORE, IT IS MY OPINION:

The clerk of district court is not authorized to charge a nonparty state agency for copies and certification of public district court records.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/rfws/lrb