

Opinion No. 48

SECRETARY OF STATE; Fees; Filing; official bonds of state officers to be filed without charge—OFFICES AND OFFICERS; Official Bonds; filed without charge by Secretary of State—Section 25-102 (13), RCM, 1947—Section 40-1727, RCM, 1947—Section 49-124, RCM, 1947

Held: The Secretary of State must charge and collect a fee of five dollars for the filing of official bonds, except that no charge must be made for the filing of the bonds of state officers.

December 7, 1959

Honorable Frank Murray
Secretary of State
Capitol Building
Helena, Montana

Dear Mr. Murray:

You have requested my opinion as to the meaning of subdivision 13 of Section 25-102, RCM, 1947. This section provides:

"The secretary of state, for services performed in his office, must charge and collect the following fees:***

13. For receiving and recording each official bond, five dollars."

It is a general rule that state officers, when performing their official duties, do not have to pay for services rendered to them by other state officers. The procurement of an official bond is a duty required by state officers. As the state derives the sole benefit from these bonds, a statute expressly provides that the state shall pay their premiums, Section 40-1727, RCM, 1947. The fee charged for the filing of these bonds has always been paid by the state. This results in the sovereign charging itself a filing fee. This is a needless bookkeeping expense. The law does not approve of useless and wasteful acts, Section 49-124, RCM, 1947.

In interpreting the meaning of subdivision 14 of Section 25-102, Attorney General Ford, in an official opinion of the Attorney General, Volume 8, page 521, said:

" . . . no officer, elective or appointive, who, by virtue of the office, owes any duty to the state or is required to perform any service for the state, is required to pay any fee under Section 165, paragraph XIV, but that the same only applies to commissions issued to persons to act as notaries public, commissioners of deeds and others who owe no duties to and are not required to render any services to the state by reason of holding such commissions."

I approve of this interpretation and extend its application to subdivision 13 of Section 25-102, RCM, 1947.

It is my opinion that the Secretary of State must charge and collect a fee of five dollars for the filing of official bonds, except that no charge must be made for the filing of the bonds of state officers.

Very truly yours,
FORREST H. ANDERSON
Attorney General