

Opinion No. 66-132

December 6, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Paul J. Lacy, Assistant Attorney General

TO: Mr. E. H. Williams, Jr., District Attorney, Third Judicial District, County Courthouse, Las Cruces, New Mexico

QUESTION

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Is the filing fee for a marketing association created pursuant to the terms of Sections 45-14-1 through 45-14-23, N.M.S.A., 1953 Compilation, which is incurred for filing copies of Articles of Incorporation, with the County Clerk to be governed by Section 45-14-8, supra, or by the terms of Section 71-1-10, N.M.S.A., 1953 Compilation?

CONCLUSION

Both sections apply.

OPINION

{*174} ANALYSIS

Section 45-14-8, supra, requires marketing associations to file their Articles of Incorporation with the State Corporation Commission and copies of those Articles of Incorporation are also required by that statute to be recorded in the Office of the County Clerk where the principal office of the association is to be located.

Section 45-14-8, supra, provides as follows:

45-14-8. Filing and recording articles of incorporation. -- The articles of incorporation shall be filed with the state corporation commission, and a copy thereof, duly certified by such commission, shall be recorded in the office of the county clerk of the {*175} county where the principal office of said association is to be located in this state. For filing the articles of incorporation an association shall pay to the state corporation commission one dollar (\$ 1.00) together with the proportionate part of the annual license fee as hereinafter provided which may be due for the succeeding fraction of the fiscal year; and for filing an amendment to the articles one dollar (\$ 1.00). For filing such certified copy of the articles of association with the county clerk, the association shall pay a fee of one dollar (\$ 1.00).

Pursuant to the mandate of this statute, a marketing association has presented the Dona Ana County Clerk with a copy of this Article of Incorporation for her to photocopy and file. The County Clerk wishes to know whether the correct fee to be charged is found in the above quoted statute or whether the fee to be charged is that which is set forth under Section 71-1-10, N.M.S.A., 1953 Compilation. The latter statute sets forth specific fees to be charged for recordation of various instruments. Section 71-1-10, supra, does not refer to filing fees for Articles of Incorporation of marketing associations. The statute does contain the following general language:

For each instrument recorded, the recording fee for which is not hereinabove fixed, and when the instrument is not photocopied, the recording fee shall be one dollar seventy-five cents (\$ 1.75) for the first seven hundred [700] words or less, and twenty-five cents (\$.25) for each additional one hundred [100] words or fraction thereof.

For each instrument recorded, and where the instrument is photocopied, the recording fee shall be one dollar seventy-five cents for the first page and one dollar (\$ 1.00) for each additional page or portion thereof.

For each instrument recorded having more than two [2] acknowledgments, an additional fee of fifty cents (\$.50) shall be charged for each additional acknowledgment; and for each instrument containing more than two hundred [200] words in the description of the property contained in the instrument, an additional charge shall be made of twenty-five cents (\$.25) for each additional one hundred [100] words. This additional charge shall not be made in cases when the instrument is photocopied or when the recordation of the instrument is determined by the number of words contained in the instrument and not by a flat fee herein fixed. In all cases where standard forms are prescribed, and nonstandard forms of instruments for which a flat fee is fixed are recorded, a charge of twenty-five cents (\$.25) shall be made for each additional one hundred [100] words, or portion thereof, in excess of the length of the standard form prescribed, except when the instrument is photocopied.

Actually, the two statutes are not in conflict. One statute provides a **filing** fee and the other sets out the fees to be charged for **recording**. "Filing", as it is used here, takes place when a paper is delivered to the proper official to be kept on file and available to be seen, **Gallagher v. Linwood**, 30 N.M. 211, 231 P. 627. 37 A.L.R. 664. "Filing" carries the idea of permanent preservation as a public record, **In re Gubelman**, 10 F.2d 926, 929. "Recording" deals with committing to writing, to printing or some other means of transcribing a history of an act or series of acts in an official volume for the purpose of giving notice to the same, of furnishing authentic evidence and for preservation, **Cady v. Purser**, 131 Cal. 552, 63 P. 844, 82 Am. St. Rep. 391; **Schimmel v. People**, 108 Colo. 592, 121 P. 2d 491.

Thus, we see that Section 45-14-8, supra, demands that the Articles of Incorporation be recorded and filed. That section then sets a **filing** fee, but it is silent upon the fees to be charged for the **recording** of the Articles of Incorporation by the County Clerk. To

determine the correct **recording** fees we must turn to Section 71-1-10, supra.
Therefore, both sections apply.