

Opinion No. 67-102

August 22, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mrs. Ernestine D. Evans Secretary of State State of New Mexico Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Does the recording fee prescribed in Section 71-1-10, N.M.S.A., 1953 Compilation for photocopying instruments apply to other instruments such as change of name decrees, the recording fees for which are prescribed in other statutory provisions?
2. Are county clerks authorized to charge a fee for certifying probate instruments such as letters testamentary? If so, what fee may be charged and must the receipt be issued from the probate court?
3. May a recording fee of \$ 1.75 be charged for each mining claim listed in a single proof of labor affidavit?
4. Must a notice of mining location be acknowledged pursuant to N.M. Laws 1967, ch. 10, sec. 1?
5. How is the Internal Revenue Service to be billed for recording of federal tax liens in view of the requirement that a recording fee must be received before any instrument can be recorded?
6. May county clerks charge for putting recording data on a duplicate copy of a recorded instrument?
7. What fees may be charged for lien searches?

CONCLUSIONS

1. See analysis.
2. See analysis.
3. No.
4. Yes.

5. Monthly.
6. No.
7. See analysis.

OPINION

{*148} ANALYSIS

Section 71-1-10, N.M.S.A., 1953 Compilation provides in part that:

For each instrument recorded, {*149} and where the instrument is photocopied, the recording fee shall be one dollar seventy-five cents (\$ 1.75) for the first page and one dollar (\$ 1.00) for each additional page or portion thereof.

There are statutory provisions other than Section 71-1-10, supra which prescribe recording fees for specific instruments. Section 22-5-1, N.M.S.A., 1953 Compilation, Section 22-7-18, N.M.S.A., 1953 Compilation and Section 63-2-2, N.M.S.A., 1953 Compilation are examples. These statutory provisions do not specifically prescribe a separate recording fee for photocopying the instruments mentioned therein.

As a general rule, conflicts between general and specific statutes are resolved by giving effect to the specific statute. **Lopez v. Barreras**, 77 N.M. 52, 419 P.2d 251 (1966). That part of Section 71-1-10, supra quoted above is a general statutory provision because it applies to all instruments recorded by the photocopying process. Unless a fee is otherwise specifically prescribed for recording a specific instrument by the photocopying process, the fee prescribed in Section 71-1-10, supra will apply. If, however, a recording fee is otherwise specifically prescribed for photocopying the specific instrument, it will apply notwithstanding Section 71-1-10, supra. If the instrument is not recorded by the photocopying process, the fee specifically prescribed for recording the instrument will apply.

Because, for example, Section 22-5-1, supra does not specifically prescribe a separate recording fee when the photocopying process is used to record change of name decrees, the fee prescribed in Section 71-1-10, supra for photocopying such instruments will apply if change of name decrees are recorded by the photocopying process. If change of name decrees are not recorded by the photocopying process, the recording fee prescribed in Section 22-5-1, supra will apply.

County clerks are by constitutional provision also clerks of the probate courts. New Mexico Constitution, Article VI, § 22. Section 16-4-23, N.M.S.A., 1953 Compilation provides in part that clerks of the probate courts may charge:

For certificate and seal authenticating any paper as a true and correct copy, fifty cents (50 [cents]).

County clerks acting as clerks of the probate courts are, therefore, authorized to charge a fee of fifty cents for certifying instruments recorded in the probate courts.

Section 16-4-25, N.M.S.A., 1953 Compilation requires clerks of the probate courts to keep a separate book of all money received by them. The receipt for the fee for certifying probate instruments must, therefore, be issued from the probate court.

Section 71-1-10, N.M.S.A., 1953 Compilation provides in part that:

County clerks shall receive for recording the following fees where the instrument is not photocopied:

* * * *

Notice of mining location or proof of labor ____ \$ 1.25

Throughout the remainder of Section 71-1-10, supra the prescribed recording fee is determined by the number of words contained in each instrument to be recorded, the number of pages constituting each instrument to be recorded, or the number of acknowledgments contained in each instrument to be recorded. With the exception of releases of mortgages, deeds of trust, chattel mortgages and conditional sale contracts, Section 71-1-10, supra does not refer to the number of transactions affected by each instrument as being a factor in determining the fee to be charged for recording each instrument. It is our opinion that the {**150*} fee prescribed in Section 71-1-10, supra for recording a proof of labor affidavit may be changed only for each affidavit recorded, regardless of the number of mining claims listed in each affidavit. Cf., Opinion of the Attorney General No. 67-95, dated July 27, 1967.

If the photocopying process is used for recording instruments, the recording fee for a proof of labor affidavit listing more than one mining claim is \$ 1.75 for the first page and \$ 1.00 for each additional page of the affidavit. See Opinion of the Attorney General No. 65-234, dated December 8, 1965.

We realize that the effects of this opinion is to cast a burden on county clerks because they must index and cross-index each claim contained in each affidavit. Only the legislature, however, may make the desired changes in Section 71-1-10, supra which will authorize county clerks to charge a recording fee for each mining claim listed in any one proof of labor affidavit.

N.M. Laws 1967, Ch. 10, § 1, amending Section 71-1-3, N.M.S.A., 1953 Compilation provides in part that:

Any instrument of writing, not duly acknowledged and certified, may not be filed and recorded, nor considered of record, though so entered; provided however, that * * * instruments of writing in any manner affecting lands in the state, **when these**

instruments have been duly executed by an authorized public officer, need not be acknowledged but may be filed and recorded; * * * (Emphasis added)

Because they are not instruments which are executed by a public officer (Sections 63-2-1 and 63-2-14, N.M.S.A., 1953 Compilation), notices of mining location must be duly acknowledged and certified to be recorded by a county clerk.

Section 71-1-12, N.M.S.A., 1953 Compilation provides that:

No county clerk of any county shall receive any instrument of writing for filing or recording unless his legal fees for such filing and recording shall have first been paid.

N.M. Laws 1967, Ch. 253, § 4, which prescribes the fee for recording and indexing documents affecting a federal tax liens provides in part that:

The officers shall bill the district directors of internal revenue on a monthly basis for fees for documents recorded by them.

Section 71-1-12, supra is a general statute, whereas N.M. Laws 1967, Ch. 253, § 4 is a special statute. Conflicts between general and specific statutes are resolved by giving effect to the specific statute. The specific statute is considered an exception to or qualification of the general statute. **Lopez v. Barreras**, supra. Therefore, notwithstanding the prohibition of Section 71-1-12, supra county clerks must record federal tax liens without first receiving the recording fee and must bill the Internal Revenue Service for the recording fee at the end of each month.

Section 15-43-15, N.M.S.A., 1953 Compilation, provides that no county officer shall accept or receive for or on account of his office any fees other than authorized by law. There are no statutory provisions prescribing a fee for placing recording information on a duplicate copy of a recorded instrument. Therefore county clerks are not authorized to charge for rendering this service.

Section 71-1-12, N.M.S.A., 1953 Compilation provides that county clerks shall be entitled to five cents for each year for each name searched against for deeds and mortgages and twenty-five cents for a search for judgments or for mechanic's liens. In Opinion of the Attorney General No. 62-20, dated {**151*} January 29, 1962, we stated that the instruments required or permitted to be filed under the Uniform Commercial Code are not included within the class of instruments specified in Section 71-1-12, supra and that the Uniform Commercial Code does not prescribe a fee for searching for instruments filed pursuant to it. We therefore concluded that no statutory fee is provided for searches for instruments filed pursuant to the Uniform Commercial Code.

By: Edward R. Pearson

Assistant Attorney General