

OPINION
47-65

September 8, 1947 (OPINION)

COUNTIES

RE: Clerk's Fees in Connection with Discharge of Real Estate Mortgages

This will acknowledge your letter of September 3, 1947, in which you request an opinion from this office relative to the filing fees to be charged in connection with the discharge of real estate mortgages under the terms of section 35-0313 of the 1943 Revised Code, and for petition for change of name of an individual.

We have already held that subsection 10 of section 11-1704 of the 1943 Revised Code applies as to the fees to be charged by the clerk of the district court for filing of any proceeding involving the procedure for discharge of a real estate mortgage under the terms of section 35-0313 of the 1943 Revised Code. In an opinion to Mr. Register, dated August 6, 1945, we said in that connection:

"Another method of procedure which would serve the same purpose would be to file the original order and application in the office of the clerk of the district court, and to have a certified copy of the order filed in the office of the register of deeds, but, as we have pointed out, this is not an action and the filing fee would be governed by subdivision 10 of section 11-1704 which enumerates the fees to be charged by the clerk of the district court. Subdivision 10 provides, 'for recording and indexing any paper not filed in an action or proceeding, for the first four folios, fifty cents, and for each additional folio, ten cents'."

In another opinion, under date of June 25, 1947, we said this:

"Since there is no specific provision in section 11 1704 for recording of papers in connection with the proceedings for discharge of mortgages under section 35-0313, it is my opinion that subsection 10 of section 11-1704 would apply".

Chapter 228 of the 1947 Session Laws amends subsection 1 of section 11-1704 of the 1943 Revised Code, and as amended and reenacted reads as follows:

"For the filing of an action, including an action transferred from another county, and for all things in connection therewith which are not hereinafter provided for, seven dollars and fifty cents".

Chapter 32-28 of the 1943 Revised Code deals with change of name of persons and places. The district court is vested with authority to change the names of persons, villages, and cities within this state. (Section 32-2801). This procedure may be instituted by petition filed in the district court, and the judge of the district court may change the name upon being duly satisfied by proof in open court of the truth of the allegations set forth in the petition. Thirty days

previous notice of the intended application must be given in a newspaper printed in the district. (Section 32-2802). This chapter also provides that all costs of the petitioner shall be charged to him as in other civil actions. (Section 32-2804).

It would appear that a petition or application requesting the change of name under chapter 32-28 is in the nature of an action. No fees are provided therefor under the terms of section 11-1704 nor under any of the subsections thereof, except subsection 1 which was amended as aforesaid. Accordingly, since this proceeding is in the nature of an action and within the jurisdiction of the district court for which no filing fee is provided, except by subsection 1 of section 11-1704, as amended by chapter 228 of the 1947 Session Laws, the filing fee for the institution of such action should be \$7.50.

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