

**OPINION  
50-165**

March 31, 1950 (OPINION)

RECORDING

RE: Bureau of Reclamation

I am in receipt of your letter of March 30, 1950, requesting our opinion as to the necessity of your department (Bureau of Reclamation) paying in advance for the recording of instruments with the registers of deeds of the various counties.

You say that such procedure materially hampers the operations of your department inasmuch as the federal government "cannot pay such fee or for any service or material until such time as the service or material has been received."

Section 11-1801 N.D.R.C. 1943 provides:

The register of deeds shall:

1. \* \*(record an instrument) if the person offering (it) \* \* \* shall first pay to him the fees provided by law for such filing or recording; \* \* \*."

However, this section does not say that it is a necessary condition precedent that the fee be paid in advance before filing or recording is permitted.

ON the contrary, section 44-0809 N.D.R.C. 1943, by implication, permits the register of deeds to postpone payment of the recording or filing fee. The words of the statute are as follows:

The clerk of the supreme court, the clerk of each district court, the county judge, sheriff, justice of the peace, constable, or register of deeds, in all cases may require the party for whom any service is to be rendered to pay the fees in advance of the rendition of such service, or to give security for the same, to be approved by the officer."

IN view of the fact that the federal government is prohibited from paying in advance and the fact that the register of deeds may, if he desires, postpone payment, it is our opinion that the only reasonable procedure to be followed by the various registers of deeds is to accept a voucher or similar credit slip, drawn on the Bureau of Reclamation, in lieu of the cash payment.

The register of deeds could then submit these vouchers to your department at the end of each month and receive payment in a lump sum. This would, I believe, be advantageous to all concerned and reduce to a minimum any possible friction which might otherwise exist between the state and federal authorities.

WALLACE E. WARNER

Attorney General