

**OPINION
59-72**

March 12, 1959 (OPINION)

COUNTIES

RE: Register of Deeds - Fees - Certified Copy

This is in reply to your request for an interpretation of section 11-1805 of the 1957 Supplement to the North Dakota Revised Code of 1943. The particular question is as follows:

"If an instrument is presented for recording and a duplicate copy of the same instrument is presented for certifying as a certified copy of the recorded instrument, does section I and section J apply to the certified copy?"

Subsection I of the above section is as follows:

"For a certificate and seal, fifty cents, but no charge shall be made for a certificate and seal in filing and recording an instrument presented for record;"

Subsection J of the above section is as follows:

"For making a certified copy of a recorded instrument the same as charged for recording same;"

To fully appreciate the problem involved it is helpful to consider what constitutes "making a certified copy."

The certification of a certified copy recites in substance that the copy is the same as the original which is recorded in the office of the register of deeds. The certification not only pertains to the exactness of the copy to the original but also pertains to the fact that the original is recorded in the office of the register of deeds. The making of a certified copy also includes a comparison of a copy with the original and a certification that it is exactly the same as the original. The term "making a certified copy" does not necessarily mean that the register of deeds is required to make the copy in his office before he can charge a fee for certifying the copy. It is the placing of his certification thereon after he has made the comparison that constitutes the making of a certified copy. The mere fact that a duplicate copy is furnished to the register of deeds for his certification does not alter the requirement that the register of deeds must compare the copy with the original and then certify that it is the same as the original which is recorded. It is this process that constitutes the making of a certified copy.

This calls to our attention another item to be taken into consideration which is that the register of deeds is required to make a certified copy only of an instrument which is recorded. The fact that an instrument is recorded becomes part of the certification made by the register of deeds.

Subsection I pertains solely to such instance where the register of deeds is required to make a certification upon which he places his seal wherein he is not making a certified copy of an instrument recorded in his office.

It is therefore our opinion that subsection J would apply to the facts submitted. It would also follow that the register of deeds is entitled to charge a fee for making the certified copy which is the same as the fee charged for recording the original instrument.

LESLIE R. BURGUM

Attorney General