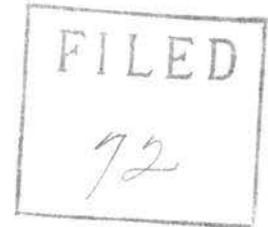


COUNTY RECORDER OF DEEDS - Marriage license blanks, by whom  
furnished, Section 11527, R. S. Mo. 1929.

February 13, 1933.



Hon. John S. Phillips  
Prosecuting Attorney  
Butler County  
Poplar Bluff, Missouri

Dear Sir:

Your recent letter directed to the Attorney General has been handed the undersigned for attention. You asked an opinion of this office upon the following questions:

"1. The question has arisen whether the County Court of this County or the Recorder of Deeds of this County is supposed to pay for the blank marriage licenses for the use of the Recorder of Deeds. There seems to be quite a controversy on this particular point and I would like to have your opinion on it.

2. There is a man in this City who desires to sell tear gas pencils. These are made to look like ordinary automatic pencils only on the top there is a device for discharging a tear gas bullet. I have searched the statutes and have been unable to find any statute directly bearing on this. I would appreciate an opinion on these two matters."

Section 9055, R. S. Mo. 1899, as carried forward from the Statute of 1889, provided as follows:

"The recorder shall keep his office at the seat of justice in each county and shall provide the same with suitable books, in which he shall record all instruments of writing authorized or required to be recorded."

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In the case of Ewing v. Vernon County, 216 Mo. 681, Lamm, J. writing the opinion of the court, construed the above section in connection with various other provisions relating to county courts and county offices. That action involved a controversy between the county court and recorder of Vernon County, over certain sums claimed by the recorder to be due him for expenditures for janitor service and stamps. By reason of the meager provisions of the statute relating to the expenses which might be allowed the recorder, the court discussed provisions relating to other offices in reaching its conclusions as to what should be provided for the recorder. This case was decided in Division One, February 25, 1909, having been certified from the Kansas City Court of Appeals.

It will be observed by reference to Section 9055, R. S. No. 1899, supra, that the duty was imposed upon the recorder to maintain the office at the county seat and provide the same with books. The court in the Vernon County case reached the conclusion that the real intent of the various statutory provisions was that the county court should not only furnish an office to the recorder, books, furniture, stationery and supplies, but that he should also be provided with janitor service and stamps.

By reason of the meager provision of the statutory provision as then existing and possibly of the decision, as above referred to, the legislature, in June following the rendition of the opinion by the Supreme Court, enacted the following section, now designated as Section 11527, R. S. No. 1929:

"The recorder shall keep his office at the seat of justice, and the county court shall provide the same with suitable books, in which the recorder shall record all instruments of writing authorized and required to be recorded. \*\*\*\*\*"

It will be observed that in this section it is incumbent upon the county court to furnish suitable books in which the recorder shall record all instruments of writing authorized and required to be recorded. No provision is made for the furnishing of any-thing other than books to the recorder. If the plain statutory provision, then, should be the only guide upon the inquiry and if the amended provision was intended to and did limit the articles to be furnished the recorder, the statute

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itself would answer the question.

Section 2978 R. S. Mo. 1929, makes it mandatory upon the recorder to issue marriage licenses and he is the only person upon whom that duty rests. In 46 C. J. 1018, the following declaration of law is found:

"Where the law requires an officer to do that which necessitates an expenditure of money for which no provision is made to supply him with cash in hand, he may make the expenditure out of his own funds and have reimbursement therefor."

That principle of law is approved in the Vernon County case, supra. Upon that authority, then, it is the opinion of this department that the marriage license blanks required by the recorder should be paid for by the county court from its general revenue fund.

From the description as given of the tear gas pencil, we do not find any criminal statutory provision which would prohibit its sale.

Yours very truly,

CARL C. ABINGTON  
Assistant Attorney General.

APPROVED: \_\_\_\_\_

ROY McKITTRICK  
Attorney General.

CCA:EG