

Recorder of Deeds

Proper fee for recorder to charge for marriage license is \$1.00 but where recorder conscientiously retains doubt as to age he may take affidavit as to age at a charge of \$.25 additional.

8-13
August 4, 1934



Honorable Forrest Smith,
State Auditor,
Jefferson City, Missouri.

Dear Sir:

We have your letter of May 17, 1934 in which is contained a request for an opinion as follows:

"Will you please advise us what, in your opinion, is the proper fee for a recorder of deeds to charge for the issuance of a marriage license. In making county audits we find that some recorders charge \$1.00 under Section 2979, while others charge \$1.50 or \$2.00, justifying the additional charge over \$1.00 by Section 11804 which provides 'for every certificate and seal - 50¢.' The recorder in these latter cases, requires an affidavit from the applicant as to his age where the matter is in doubt.

"In this connection we particularly call your attention to Section 2980 wherein it is provided that should a recorder neglect or refuse to issue a license on payment or tender of the fee of \$1.00, he shall be deemed guilty of a misdemeanor."

Section 2978 Revised Statutes of Missouri 1929 provides that recorders shall issue marriage licenses to persons legally entitled thereto.

Section 2979 Revised Statutes of Missouri 1929 provides as follows:

"Sec. 2979. Licenses to be recorded. The recorder shall record all marriage licenses issued in a well-bound book kept for that purpose, with the return thereon, for which he shall receive a fee of one dollar, to be paid for by the person obtaining the same."

Section 2980 Revised Statutes of Missouri 1929 provides that if any recorder willfully refuse or neglect to record or issue to a person legally entitled thereto a license, on payment of the fee provided, he shall be deemed guilty of a misdemeanor and fined not less than five dollars nor more than one hundred dollars.

Section 2983 Revised Statutes of Missouri 1929 provides among other things that no recorder shall issue a license to any female under the age of eighteen or any male under the age of twenty-one

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years without a written consent from parent or guardian.

Section 2964 Revised Statutes of Missouri, 1929, provides among other things that any recorder issuing a license contrary to said provisions shall be deemed guilty of a misdemeanor and fined not exceeding five hundred dollars; that in addition he shall be subject to a civil action by the parent or guardian with recovery limited to five hundred dollars.

The above sections are all contained in Chapter 19 Revised Statutes of Missouri, 1929, said chapter being entitled "Marriage and Marriage Contracts."

On the face of the matter we have a rather anomalous situation in that the recorder is required to do certain things, is penalized if he does not do them, is penalized if through some circumstance not necessarily within his control he makes a mistake, and yet no provision appears in the chapter for any steps the recorder may take to safeguard himself in the performance of his duties. In other words, when a person states himself or herself to be of legal age, unless the recorder knows the parties personally, he has no way of knowing whether or not they speak the truth. Where a conscientious doubt exists in the mind of the recorder he could of course refuse to issue and record the license, and such would probably not be deemed "wilful" so as to subject him to the penalty of Section 2969. An affidavit as to age could then be required merely as a matter of proof in order to obviate further difficulty. For such authority on the part of the recorder we go to the general statutes.

Section 11562, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 11562. Recorder may administer oaths, when.- Hereafter whenever, under any law of this state relating to the duties of the recorder of deeds in any county of this state, it becomes necessary for any person to be sworn to any statement, affidavit or other papers of any kind, the recorder of deeds shall be authorized to administer an oath to any person in matters relating to the duties of his office, with like effect as clerks of courts of record: Provided, he use his seal of office to the jurat, as clerks of courts of record do. He shall receive the same compensation allowed by law for like service as clerks of courts are now allowed."

We are on the opinion that the affidavit as to age in the situation above referred to is necessary under the laws relating to the duties of recorders and is hence within the above section. We do not mean to say that in every case of the issuance of a marriage license the recorder may require an affidavit or affidavits. We merely refer to cases where the matter of age is in doubt and the necessity for the recorder to protect himself arises.

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The question then arises as to how much the recorder is entitled to charge for each affidavit. Section 11562 above quoted fixes the compensation as that allowed to clerks of courts of record for a like service.

Section 11781, Revised Statutes of Missouri, 1929, relating to fees of clerks of county courts provides in part as follows:

"For oath and certificate to an affidavit.... § .25."

Section 11785, Revised Statutes of Missouri, 1929, relating to fees of clerks of circuit courts and courts of common pleas, provides in part as follows:

"For oaths and certificate to affidavit§ .25."

The fee then, to be charged by the recorder for each affidavit is twenty-five cents. The law is so explicit on this that we feel it takes precedence over the allowance of fifty cents for certificates and seals generally in Section 11804 referred to in your letter. Specific wording as in the sections above quoted will always take precedence over general wording as to a particular situation.

In this connection, however, it is well to note Section 7509, Revised Statutes of Missouri, 1929, which provides that in all cities having a population of over 100,000, certain officers, including the recorder of deeds, are authorized and required to administer oaths in connection with the business of their offices free of charge.

In view of the above, therefore, we are of the opinion that the proper fee for a recorder to charge for the issuance of a marriage license is \$1.00. If a recorder conscientiously needs an affidavit from each party the top charge would be \$1.50; but in no case could the charge be \$2.00.

Very truly yours,

CHAS. M. HOWELL, JR.
Assistant Attorney General

CMB-Jr:LKL

Approved: _____
Attorney General