

RECORDER OF DEEDS:)
MARRIAGE LICENSE:)

Fee that recorder of deeds may charge for marriage license - \$1.00, and if he takes an affidavit from a person he may only charge 25¢ for taking of such.

March 26, 1935.

330



Mr. John E. Bohon
Recorder of Deeds
Pettis County
Sedalia, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"I notice of late several articles in different newspapers as to the fee for a Marriage License and would like to have the matter made more plain. I notice an article of the Associated Press from Jefferson City in which it states that you say the maximum fee for a marriage license, including all affidavits, could only be \$1.50. I also have in my possession an Opinion from your department which was rendered by Franklin E. Reagan, Assistant Attorney General, in which it states, that the fee allowed for issuing and recording a marriage license as provided by statute is \$1.00, and the fee for attaching the certificate and seal as provided by Section 11804 is \$.50 making the license when both parties are of legal age \$1.50, and in case one of the applicants is under the legal age his parents affidavit is \$.50 and in case both applicants are under the legal age the affidavits giving their consent are \$.50 each, or \$1.00. This would make three different prices for licenses \$1.50, \$2.00 and \$2.50. I know the statute provides a fee of \$.50 for each acknowledgment he takes."

In your letter you state that you are in possession of an opinion from this Department, written by Honorable Franklin E. Reagan, Assistant Attorney-General, and such is causing confusion, due to articles in different newspapers. We will again write on the subject so that any confusion which has arisen may be removed.

Chapter 19, R. S. Mo. 1929, pertains to "Marriage and Marriage Contracts", and Section 2977 provides that, "Previous to any marriage in this state, a license for that purpose shall be obtained from the officer herein authorized to issue the same", and said section does away with common law marriages in this state.

The Legislature, then, has provided that marriage in the State of Missouri must be solemnized and in order for one to marry in this state a license must be obtained as a condition precedent. Section 2978, R. S. Mo. 1929, provides that the recorder of deeds shall issue the license, and Section 2979 provides, "for which he shall receive a fee of one dollar, to be paid for by the person obtaining the same." Thus, the fee for issuing a license is one dollar.

Section 2983, R. S. Mo. 1929, in part provides as follows:

"* * *, and no recorder shall issue a license authorizing the marriage of any male under the age of twenty-one years or of any female under the age of eighteen years, except with the consent of his or her father, mother or guardian, which consent shall be given at the time, in writing, * * *. The recorder shall state in every license whether the parties applying for same, one or either or both of them, are of age, or whether either or both are minors, and if either party is a minor, etc. * * *."

From the above then it is seen that the duty of issuing licenses to marry is imposed upon the recorder and he is

restricted as to whom he shall issue them, in particular as to the age of the parties. In other words, he must use reasonable care and diligence to ascertain if the parties are adults or minors. There is no provision in the statutes that provides how the recorder shall ascertain the facts as to age of the parties applying for license. However, the statutes do penalize him if he knowingly makes a mistake and issues a license to one not entitled to same. Thus, the practice of many recorders, if not all, in the state has been to exact an affidavit from the persons applying for license, to the effect that the parties are single and unmarried, of a certain age and may lawfully contract and be joined in marriage. The obtaining of the affidavit is for the protection of the recorder. If the affidavit shows that the person applying is under the age limit, then an additional affidavit must be obtained from the parent or guardian or custodian of the minor in order for the marriage to be solemnized.

The question then presents itself as to how much the recorder may charge if he takes an affidavit from the parties applying for a marriage license when he exacts as a condition precedent the facts to show capacity to marry.

A public officer in order to charge any fee for services or do any act must have statutory authority for doing it. To entitle an officer to compensation he must point to the statute authorizing such. As early as 1885 the Supreme Court of Missouri in the case of *Williams v. Chariton County*, 85 Mo. 642, held (quoting from the syllabus):

"No fees are allowed an officer except where expressly given and allowed by law."

In *King v. Riverland Levee District*, 279 S. W. 195, the St. Louis Court of Appeals, page 196, said:

"It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract,

and that compensation exists, if it exists at all, solely as a creation of law and then as incidental to the office. (Cases cited)"

We then must find the statute that permits the recorder to charge for taking a person's affidavit. Section 11804, R. S. Mo. 1929, is captioned "Fees of recorders" and in said fees it will be noted that there is nothing said as to what shall be charged for taking an affidavit. However, said section does provide:

"For every certificate and seal.... .50"

Section 11562, R. S. Mo. 1929, provides that the recorder may administer oaths, and reads as follows:

"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."

A recorder may swear a person to an affidavit or other paper and when he does so and uses his seal of office to the jurat he receives the same compensation for doing that as clerks of courts are now allowed.

Section 11781, R. S. Mo. 1929, pertains to "fees of clerks of county courts", and in part provides the following:

"For oath and certificate to an affidavit25"

In common parlance the distinction between "certificate" and "affidavit" being that a "certificate" is something that the officers certify to as being an existing fact, for example, a recorder of deeds certifies that a deed is of record and puts his seal on it, while an "affidavit" is taken from a person and sworn to before an officer. The recorder of deeds, if he certifies to a paper, that such is on file in his office, charges fifty cents for that certificate. However, when he swears a person to an affidavit or paper the only charge that he can make is twenty-five cents. Section 11562, supra.

Assume, therefore, that two parties would come before you as Recorder and ask for a marriage license. If you were not satisfied that these parties were of age and single and unmarried, then you would have the right to inquire as to those facts, and if you were of the opinion that in order to protect yourself that affidavits should be executed by the parties and they, signifying a willingness to have you take their oaths, would sign separate affidavits and swear to them in your presence and you put your jurat on same, then, under such circumstances, you could only charge twenty-five cents per person, or a total of fifty cents, which amount, plus the one dollar, would be one dollar and fifty cents, and that is all you could charge for services rendered in connection with the issuance of such marriage license, in our opinion.

If a person was a minor, and so stated the fact, it would not be necessary to take that person's affidavit but you should then require the affidavit of the parent or guardian giving consent to said minor to marry, and if you took the parent's or guardian's affidavit you could only charge such parent or guardian, twenty-five cents, the same charge as to the adult person applying for a license.

You state, "I know the statute provides a fee of \$.50 for each acknowledgment he takes." We know that you are in error as to this because if you swear one to an affidavit you can only charge twenty-five cents. However, if you certify to papers as being true and correct and on file in your office, and attach your seal, then you may charge fifty cents for that certificate.

March 26, 1935.

From the above and foregoing it is our opinion:

1. The fee for issuing a marriage license is \$1.00. Section 2979, supra.
2. The fee for taking an affidavit is 25¢. Sections 11562, 11781 and 11785, supra.

We have reached the conclusion that the opinion issued by this department, dated February 20, 1935, is not a correct statement of the law and that the fee for issuing a marriage license is \$1.00, and the fee for taking an affidavit is 25¢.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY MCKITTRICK
Attorney-General

JLH:EG