

RECORDER OF DEEDS:

Is entitled to compensation as provided by statute. No compensation for a receipt that a certain chattel has been filed in his office.

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September 30, 1935

Honorable Jeff R. Wilson
Recorder of Deeds
Lexington, Missouri



Dear Sir:

We acknowledge receipt of your letter of September 20, as follows:

"Will you please tell me if the Recorder of Deeds is not entitled to an extra ten cents when he issues a receipt that a certain chattel has been filed in his office, giving the date, time, instrument number and signing the same in his official capacity as recorder of deeds.

There is some question as to this and I would appreciate an early reply."

As stated by the Court in *Gannon v. Lafayette County* 76 Mo. 676, which is a well established rule of law in this state,

"The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the statute gives it. When the statute fails to provide a fee for service he is required to perform as a public officer, he has no claim upon the State for compensation for such service."

Section 3099, page 209, Laws 1935, provides for a fee to the recorder for filing chattel mortgages and also for discharging same,

"Such recorder shall enter in a book, to be provided by him for such purpose, the names of all the parties to such instrument, arranging the names of such mortgagors or grantors alphabetically, and shall note thereon the time of filing such instrument or copy, for which said recorder shall receive a fee of twenty cents. Said fee shall also include and cover all costs for discharging said mortgage or deed of trust according to the methods hereinafter provided. Such mortgage or deed of trust, when satisfied, shall be discharged by any of the following methods:

1. By the mortgagee, cestui que trust, his agent or assigns, on the margin of such index, which shall be attested by the recorder.
2. Upon the presentation by the mortgagor or grantor of the original mortgage or deed of trust, and upon such mortgagor or grantor making affidavit before such recorder that the instrument presented by him is the original of the copy on file, and that such mortgage or deed of trust has been fully paid and satisfied.
3. Upon presentation or receipt of an order in writing, signed by the mortgagee or cestui que trust thereof, attested by a justice of the peace, or any notary public, stating that such instrument has been paid and satisfied.

When any of these provisions have been complied with, it shall be the duty of the recorder to enter in a column for that purpose the word 'satisfied' giving date. When a chattel mortgage shall be satisfied as above provided, the recorder may deliver

said mortgage to the holder of the note secured thereby, or, if the holder of said note refuse to receive the same the recorder may destroy said mortgage: Provided, that the recorder may deliver to the parties entitled thereto, or destroy all such mortgages now remaining on file in his office and which have been entered satisfied on the chattel mortgage register."

Section 11804 Revised Statutes Missouri 1929 is the statute providing for various fees a recorder of deeds is entitled to receive,

"Recorders shall be allowed fees for their services as follows:

For recording every deed of instrument,
for every hundred words \$.10

In addition to the above fee for recording deeds, they shall be allowed for recording every such instrument relating to real estate, a fee of ten cents, as a compensation for making and preserving direct and inverted indexes to every book containing deeds affecting real estate.

For every certificate and seal.50

For recording a plat of survey, if not more than six courses.40

For every course above six of the same02

For copies of plats, if not more than six courses40

For every course above six02."

Section 3101 Revised Statutes Missouri 1929, in part, provides:

"Every such recorder of deeds shall be entitled to receive for certified copy of such instruments so filed as aforesaid, when requested to furnish the same, for every one hundred words ten cents."

The above provision would entitle the recorder to a fee if such provision would apply to the question. However, by virtue of the definitions that follow as to what constitutes a certified copy, we are prone to be of the opinion that what you refer to in your letter is not the same as a certified copy, and, therefore, you would be entitled to no fee for such services rendered.

Webster's New International Dictionary defines 'certified copy' as follows:

"A copy made or attested by officers having charge of the original and authorized to give copy originally."

The following definition is given for 'copy,'

"An imitation, transcript or reproduction of an original record."

In Ehrlick v. Mulligan 57 A. L. R. 598, 140 Atl. 463, the Court said, in reference to a United States statute,

"This statute makes a certified copy of a record of the United States District Court admissible in evidence in the courts of this state. The question presented to us is whether a 'true copy' is a 'certified copy.' We think these terms are not interchangeable and that a 'certified copy' implies more than a 'true copy' and that a 'true copy' is not a 'certified copy.' In marking a copy under the appellation of a 'true copy' and affixing the seal of the court the name of the clerk and his deputy, if marked by deputy, there is no certifi-

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cation under the seal of the court and signature of the clerk that the document so marked is on file in the office of the clerk, and is a copy of the document as the same remains of record."

Therefore, from the above definition, a receipt merely giving out the information that a chattel is filed, with date, time, instrument number, etc., would not constitute a certified copy of such instrument.

We are unable to find any statute authorizing the recorder to receive or be entitled to a fee for the receipt you refer to, and in the absence of such statutory provision, as stated in *Gannon v. Lafayette County*, supra, an officer is entitled to no fee for such service.

Yours very truly,

DRAKE WATSON
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, JR.
(Acting) Attorney General

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