

REQUEST NO. 518

FEEES: Fees received by Commissioner of Health from
FUNDS: Federal Government for transcripts relating
to births and deaths must be turned into the
State treasury.

November 6, 1936.



Dr. E. T. McGaugh
Commissioner of Health
Capitol Building
Jefferson City, Missouri

Dear Dr. McGaugh:

We are in receipt of a communication from the Department of Commerce, Bureau of Census, Washington, D. C., stating that on May 1, 1933, you were appointed Special Agent of the Bureau of Census and took an oath of office; that on May 24, 1933, you were authorized by the Director of the Bureau of Census to furnish transcripts of "(1) certificates of births (exclusive of still births), (2) certificates of deaths (exclusive of still births, and (3) certificates of still births (reported as births), with payment at the rate of three cents for each transcript.

You received from the Bureau of Census for said transcripts so furnished to them, the following amounts:

(1)	1933-----	\$1,116.60
(2)	1934-----	2,604.54
(3)	1935-----	3,086.07
(4)	1936-----	1,349.19

Total \$8,156.40

You have thus received from the Bureau of Census \$8,156.40 for transcripts furnished to them, and, at the rate of three cents per transcript, it means that you have furnished to the Bureau of Census 271,880 transcripts.

Article 2, Chapter 52, R. S. Mo. 1929, and amendments, relate to "Registration of Births and Deaths" in the State of Missouri, and Section 9049, R. S. Mo. 1929, provides in part as follows:

"It shall be the duty of the state board of health to have charge of the state system of registration of births and deaths; * * * * and to insure the faithful registration of the same in the registration districts and in the central bureau of vital statistics at the capital of the state. * * * * ."

By virtue of the provisions of Section 9049, supra, a Central Bureau of Vital Statistics was established. The Central Bureau of Vital Statistics is located in Jefferson City, Missouri, and by virtue of Section 9041, R. S. Mo. 1929, and Section 9024, Laws of Missouri, 1933, page 269, you, as Commissioner of Health, have supervision over the Central Bureau of Vital Statistics. Section 9041 provides in part as follows:

"The secretary of the state board of health (Commissioner of Health) shall have supervision over the central bureau of vital statistics, which is hereby authorized to be established by said board, and shall act as state registrar of vital statistics. * * * * The state board of health shall provide for such clerical and other assistance as may be necessary for the purpose of this article, who shall serve during the pleasure of the board, and may fix the compensation of persons thus employed within the amount appropriated therefor by the legislature. Suitable apartments shall be provided by the custodian of the capitol for the bureau of vital statistics and the state board of health in the state capitol at Jefferson City, which shall be properly equipped with

fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned under this article."

Thus, the Legislature has provided for clerical and other assistance necessary to register and record vital statistics of the State of Missouri.

The State Legislature appropriated to the Department of Health the sum of \$165,000.00 for "personal service" which is to pay for all services necessary for vital statistics. Laws of Missouri, 1935, pages 96-97. We thus have in Jefferson City a Central Bureau of Vital Statistics and provision made for the employment and compensation of clerical and other assistance and the payment for the administration of the provisions of the statutes relating to registration of births and deaths.

Provision was also made for the furnishing of certified copies of the record of any birth or death and the collection of a fee, which fee must be turned over to the State Treasurer, as Section 9060, R. S. Mo. 1929, provides in part as follows:

"The state registrar (Commissioner of Health) shall, upon request, furnish any applicant a certified copy of the record of any birth or death registered under provisions of this article, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant.
* * * And the state registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the state treasurer."

While the Bureau of Census advises that you took an oath of office and were appointed special agent, yet, in view of Section 4, Article XIV, of the Constitution of the State of Missouri, which provides:

"No person holding an office of profit under the United States shall, during

his continuance in such office, hold any office of profit under this state."

we assume that you furnished transcripts to the Federal Government in your official capacity as State Registrar and Commissioner of Health. We further assume that you did not individually furnish 271,880 transcripts or have some private employee furnish them, but that the actual work was done by state employees who were paid from state revenue.

While Section 9060, supra, provides that the State Registrar must, upon request, furnish an applicant a certified copy of the record of any birth or death and charge a fee of fifty cents and place said fee in the State Treasury, yet, in view of Section 101, Title 13, page 37, United States Code Annotated, we assume (1) that the data and necessary details furnished the Bureau of Census did not entail a certification as contemplated by Section 9060, supra, and (2) that it was with the view of cooperating with the Federal Government at a minimum cost to them in the collection of vital statistics. Section 101, supra, provides in part as follows:

"There shall be a collection of the statistics of the births and deaths in registration areas annually, the data for which shall be obtained only from and restricted to such registration records of such States and municipalities as in the discretion of the director possess records affording satisfactory data in necessary detail, the compensation for the transcription of which shall not exceed 4 cents for each birth or death reported; * * * * *"

If you, as State Registrar, furnished to yourself, as an individual, the necessary information and then in turn gave that to the Bureau of Census the question presents itself as to whether or not you owe the State of Missouri fifty cents for each of the 271,880 transcripts. We, therefore, are warranted in assuming that you, as Commissioner of Health and State Registrar, cooperating with the Federal Government, exacted a fee of three cents per transcript, and hence you, as a State official, have received from the Bureau of Census the sum of \$8,156.40.

It is well settled in this state that officials who receive fees must account for same and turn them to the State Treasury. The Legislature, in 1933, left no doubt on this subject because it enacted Section 1, Laws of Missouri, 1933, page 415, which in part reads as follows:

"All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals, be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. * * * * *"

Conclusion.

From the above, we conclude and it is our opinion that the fees received from the Bureau of Census, in the amount of \$8,156.40, should be turned into the State Treasury.

Yours very truly,

J. E. TAYLOR
Assistant Attorney-General.

JAMES L. HORNBOSTEL,
Assistant Attorney-General.

APPROVED:

ROY MCKITTRICK
Attorney-General.

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