

RECORDER - Recorder of Deeds is bound to require statutory fees before recording written instruments.

February 4, 1938

OPINION NO. 98

Honorable Conn Withers
Prosecuting Attorney
Clay County
Liberty, Missouri



Dear Sir:

We acknowledge your request of February 2, 1938. We also acknowledge copy of letter from Nicholas Mosby, Recorder of Deeds of your county, which was addressed to you.

He states that the Adjutant General for the State of Missouri has in his possession a list of the veterans of the World War by counties, and that he will mail the list to the Clay County Recorder upon condition that the Recorder of Deeds will agree, in writing, to record said list of veterans without expense to any State department.

Section 3955, R. S. Mo. 1929 provides in part:

"It shall be unlawful for the clerk of any court, or his deputy, or any person in his employ, or any person for him, or any other officer of any court, to buy or purchase, or trade for, directly or indirectly, any fee taxed or to be taxed as costs in the court of which he is clerk or officer, or of any other court in this state, or any county warrant, at less than par value, which may be by law due or become due to any person by or through any such court; and it shall be unlawful for any county clerk, circuit clerk, recorder, or any other officer of

any court, or his deputy, or any person in his employ, to charge, collect or receive less fee for his services than is provided by law."

Section 3956, R. S. Mo. 1929 provides:

"Any such clerk or officer violating the preceding section shall, upon conviction, be punished by fine of not less than one hundred dollars, and in addition shall forfeit his office, and it shall be the duty of the judge having criminal jurisdiction to give this and the preceding section in special charge to the grand jury."

Section 11547, R. S. Mo. 1929 provides that the Recorder record certain writings delivered to him, and Section 11564, R. S. Mo. 1929 provides a civil liability on his official bond against any Recorder who neglects or refuses to record a writing delivered to him for recording.

As a condition precedent to the duty to record qualified writings, the legal fee must be tendered or paid in advance, otherwise the Recorder can rest on his oar (see Section 11566, R. S. Mo. 1929). The legal fee provided for recording writings is found in Section 11804, R. S. Mo. 1929, which reads in part:

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

The County Treasury has an interest in fees collected by the Recorder of Deeds, as provided in Laws of Mo. 1937, page 446, Section 11786, and also Section 11568, R. S. Mo. 1929.

53 C. J. page 617, Section 27, reads as follows:

"Under a statute providing that the recording officer shall not be com-

pelled to record an instrument until after tender or payment of the fee, the clerk may refuse to receive an instrument offered for record unless the fees for recording be paid to him in advance, but this must be seasonably or immediately done upon the tender of the instrument for record, and when the clerk receives and retains the instrument in his official custody, the recording is not invalidated because the fees were not prepaid.

"Under a statute requiring that fees for recording be paid when the instrument is left for recording, municipal officers must comply with the statutory mandate as to the payment of fees, and their omission to do so within the time required in the circumstances cannot be excused or condoned."

CONCLUSION

We are of the opinion that under the Missouri statutes, supra, it would be unlawful for any Recorder of Deeds in Missouri to record any written instrument without charging the legal fee provided by law, and he must also account for said fee as provided by law, and any Recorder of Deeds would be throwing himself open to criminal prosecution as well as civil liability on his bond should he fail or refuse to charge and account for fees as provided by law. He also subjects himself to forfeiture of office.

The utility of such a public record proposed by the Adjutant General for recording in each county of Missouri as a memorial cannot be denied, and morally such

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vital information should be preserved in the county for reference by future generations, but the only lawful way for a Recorder of Deeds to record such a writing is pursuant to the legal fee first being tendered. The Legislature prescribed a fee without making any exception of liability in the circumstances under consideration.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General