

RECORDER OF DEEDS:  
FEES:

Fees of recorder of deeds for making  
certified copies.

June 6, 1939

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Mr. John P. Sherrod  
Recorder of Deeds  
Jackson County  
Kansas City, Missouri

Dear Sir:

This is in reply to yours wherein you request an opinion from this department on whether or not you should account for the collections you make for making certified copies of deeds or marriage licenses or other instruments on record in your office. In connection with this you give the following facts:

On various occasions you have requests for certified copies of deeds, marriage licenses and other records from your office. Pursuant to such requests you make up these copies and attach your official seal to same. These copies are made up by some deputy in your office and the county stationery is used. You make a charge for this service and at the present time you are not accounting to the county treasurer for this money as official fees earned and collected by you, however, you state that you are holding these funds in a separate account pending the determination of whether or not you should account for them as receipts of the office.

We note from the enclosures with your request, from the opinion of the county counsellor that you should account to the county for any supplies which you may use in making up these copies. We agree with Mr. Pew and will suggest the other points hereafter.

The making of the copy of the record may be done by any person and not necessarily the recorder. The records

in the recorder's office are public records and the general public not only has authority to inspect these records but to make copies of them.

This rule is announced in Volume 53 C. J., page 625 in the following language:

"A statute which provides for inspection of public records grants the right to inspect with all of its common-law incidents, including the right to make copies. The right to copy has been held a necessary incident of the right to inspect granted by the statute. Thus the right to inspect under the statutes includes the right to make memoranda or copies. \* \* \* \*"

On the question of the recorder of deeds performing extra official duties and retaining the charges made therefor, we find in Volume 53 C. J. at page 1074, Section 16, the rule is stated as follows:

"Under a statute providing that a register shall pay over all fees received by him after deducting his salary, all moneys received for duties performed in his official capacity must be accounted for and paid over by the register, as soon as the correct amount is shown by a duly approved accounting or settlement, notwithstanding the duties were performed outside of regular office hours; and it makes no difference whether a statute prescribing such duties fixed the amount of compensation therefor, or whether the amount was fixed by the agreement of the register and the person for whom he performed the duties. But no duty rests upon a register of deeds to account for and pay over moneys received by him for extra official services."

As authority for this rule the case of State v. Holm, 97 N. W. 821 (Neb.) is cited. At l.c. 822 the court said:

"It may be stated at the outset that, if the services for which respondent received the money in question were any part of the duties of his office, he would be required to account for and pay the same over to the relator; and it would make no difference whether the statute prescribing such duties fixed the amount of compensation therefor, or whether the amount was fixed by the agreement of the respondent and the person for whom he performed the service. \* \* \* \* \*

And speaking of extra official duties of officer, the court further said at l. c. 823:

"\* \* \* In the case at bar it cannot be contended that the respondent was obliged to perform the services in question as a part of his official duties. The rule of the excise board of the city of Lincoln was in no manner binding upon him. He could not be compelled to perform any duties or services except such as the statute enjoined upon him. As a strict matter of law, there seems to be no reason why he could not contract with the persons applying for saloon licenses to search the records for them, and receive such compensation therefor as might be agreed upon. The fact that such services were performed by his deputies, who had received payment from the county for their services, or that they were performed by himself personally, we are not at liberty

to consider, because no competent offer to prove that fact was made by the relator. While the conduct of the respondent may be of doubtful propriety, and while, perhaps, from an equitable standpoint, the money in question ought to be paid to the relator, yet these matters cannot be taken into consideration by us in deciding this case. The question presented is whether or not, as a matter of law, the respondent can be compelled to account for and pay over the money in controversy herein. It appearing that the services rendered by respondent were no part of the duties of his office, we are constrained to hold that the money paid him therefor under private contract or agreement cannot be recovered by the relator, and therefore the district court did not err in denying the writ and dismissing the action."

In our search through the statutes we find some sections which require the recorder to furnish copies of the records, but there is no provision made for a fee for such services except the charge for the certificate and seal. We particularly have in mind Sections 3253, 11556 and 11557, R. S. Missouri 1929. There may be other sections which impose a similar duty on the officer. While under these sections it seems that it would be the duty of the recorder to furnish the copy of the record, yet under the ruling in the case hereinafter cited we doubt the authority of the officer to make a charge for such copy except his certificate and seal which he attaches thereto. We have in mind the case of Gammon v. Lafayette County, 76 Mo. 675, 676, wherein this rule is stated:

"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. \* \* \* \* \*

In connection with the performance of services such as you have mentioned in your request, we refer you to Section 11570, R. S. Missouri 1929, which is as follows:

"Every recorder of deeds or the deputy of any such officer, who shall engage in the business of making abstracts of instruments of record in his office affecting the title to lands, for profit or hire, or who shall furnish to any person or persons any written extract, excerpt, memoranda or copy of any such instrument of record, for profit or hire, otherwise than under and in pursuance of the statutes defining his duties as such officer and in his official capacity, duly authenticating each extract, excerpt, memoranda or copy of every such instrument so furnished under the seal of his office, shall be deemed guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than twenty nor more than fifty dollars."

In this opinion we do not want to hold that a recorder is not authorized to perform some extra official services, yet we have cited the foregoing section for the purpose of you keeping in mind that in performing such services you are bound by the provisions of that section. The making of a copy of the record which is not required to be made under the statute and which is not prohibited by Section 11570, supra, would be classed as an extra official matter, and under the rulings hereinbefore cited

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it seems that you would be authorized to retain whatever charge you make therefor and not account for it as your official collections, except that part of the charge which is made for the certificate and seal which you attach to the copy. Of course, as Mr. Pew states in his opinion, if you use any of the county's stationery or other supplies in connection with the making of such copies, you should account to the county for those items.

As to the duty of the deputy to perform such work for you, we do not find where the statute would require him to do this, but if it does not interfere with his duties to the office and he is willing to do it as a personal favor to you, we can see no objection to him doing that. We wish to also call your attention to the fact that if the performing of these extra official duties were to interfere with you in performing your official duties, then under those circumstances we do not think you would be authorized to make such copies.

#### CONCLUSION.

From the foregoing it is the opinion of this department that while the recorder of deeds is not required to make certified copies of certain records, yet he may make such copies, but if there is no fee authorized by the statute he should not make an official charge therefor. Of course, in all cases where the copy is a certified copy his official charge for that part of the service would be the fifty cents (50¢) for the certificate and seal.

We are also of the opinion, under the Nebraska case, *supra*, that the officer is not required to report the collections which he makes for extra official duties, that is, in making copies of records which he is not required to make under the statute, except the charge for the certificate and seal as hereinbefore stated.

Respectfully submitted

APPROVED:

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