

OFFICERS: - Acceptance of "tips", even though
after office hours - against public
policy.

September 18, 1941

Hon. Mark Morris
Prosecuting Attorney
Pike County
Bowling Green, Missouri



Dear Sir:

We are in receipt of your request for an opinion,
under date of September 9, 1941, which reads as follows:

"We would appreciate an opinion as to
whether the Recorder can receive tips
for issuing marriage licenses outside
his office hours."

We understand that by the word "tips", as used
in your letter, you mean "small denominations given
and intended as personal gifts, in addition to the
regular charge for the services rendered." (149 Ky.
377, 149 S. W. 828, Bouvier's Law Dictionary.)

Section 3366 R. S. Missouri, 1939, provides
as follows:

"The recorder shall record all
marriage licenses issued in a well-
bound book kept for that purpose,
with the return thereon, for which
he shall receive a fee of one dollar,
to be paid for by the person obtain-
ing the same."

In the case of Nodaway County v. Kidder, 129 S. W. (2d) 857, 1. c. 860, the Court said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. * * * (cases cited) * * .

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. * * * (cases cited) * * ."

In the case of Robinson v. Huffaker, 23 Idaho 173, 129 P. 334, 337, it was held:

" * * * * *
that where one accepts an office with compensation fixed by law, he has no legal claim for extra compensation, and a promise by the county board to pay him an extra fee was not binding, though he had rendered services and exercised a degree of diligence greater than could legally have been required."

In the case of In Re Williams, 128 S. W. (2d) 1098, 1. c. 1102, the Court said:

"However, 'the principle is well settled, on considerations of public policy, that an officer cannot lawfully receive, or recover, a reward for the performance of a service which it is his duty to discharge. This rule has been applied to jailers; policemen; sheriffs; deputy sheriffs.' (23 R. C. L. pp. 1126, 1127.)"

We quote from the above cases in order to show the general propositions of law which we think have a bearing on the question asked in your request.

In the case of Wakefield v. VanTassell, 202 Ill. Rep. 41, l. c. 44, the Court held:

"It has been well said that public policy is a variable quality, but that it is only variable in so far as the habits, capacities and opportunities of the public have become more varied and complex, and that the principles to be applied have always remained unchanged and unchangeable. 'The relations of society become, from time to time, more complex. Statutes defining and declaring public and private rights multiply rapidly, and public policy often changes as the laws change, and therefore new applications of old principles are required.' (Davies v. Davies, L. R. 36 Ch. Div. 364.) * * * * *"

The Court, in this case, also quoted, with approval from the case of Brooks v. Cooper, 50 N. J. Eq. 761, the following:

"Whatever tends to injustice or oppression, restraint of liberty, restraint of legal right; whatever tends to the obstruction of justice, a violation of a statute or the obstruction or perversion of the administration of the law; whatever tends to interfere with or control the administration of the law as to executive, legislative or other official action, whenever embodied in and made the subject of a contract, the contract is against public policy and therefore void, and not susceptible of enforcement, ' - as, for instance, an agreement to withdraw an election petition in consideration of money was held void. (Coppock v. Bower, 4 M. & W. 361.) And so an agreement to obtain a pardon was held void. (Kribben v. Haycraft, 26 Mo. 396.) Likewise contracts for services known as 'lobby services,' * * * * * ."

In the case of *People v. Chicago Gas Trust Co.*, 130 Ill. 268, the Court held:

"Public policy is that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good. The question, then, in this case to determine is, does the condition in the deed have a tendency to be injurious to the public or to be against the public good."

We also quote from the case of *Trist v. Child*, 88 U. S. Rep. 441, l. c. 450. While this is a case

growing out of a contract for conducting a lobby upon congressmen, the Court, in refusing to uphold the contract, defined and characterized "public policy" in the following language:

"The foundation of a republic is the virtue of its citizens. They are at once sovereigns and subjects. As the foundation is undermined, the structure is weakened. When it is destroyed, the fabric must fall. Such is the voice of universal history. The theory of our government is, that all public stations are trusts, and that, those clothed with them are to be animated in the discharge of their duties solely by considerations of right, justice, and the public good. They are never to descend to a lower plane. But there is a correlative duty resting upon the citizen. In his intercourse with those in authority, whether executive or legislative, touching the performance of their functions, he is bound to exhibit truth, frankness, and integrity. Any departure from the line of rectitude in such cases, is not only bad in morals, but involves a public wrong. No people can have any higher public interest, except the preservation of their liberties, than integrity in the administration of their government in all its departments."

We have made a diligent search to find a case identical to the one which we thought you had in mind at the time you made the opinion request. Our endeavors lead us to cite the case of Yuma County v. Donald B. Wisener, 46 P. 115, 99 A. L. R. 642. Other cases may be found digested in the A. L. R. In the Yuma County case, supra, the following is found at page 645:

"The gist of the first cause of action is that the defendant, by means of the scheme or system above set forth, makes nonresident applicants for marriage licenses believe that they can only obtain a license to marry by paying a fee of \$4.50, when as a matter of law such licenses are required to be issued upon the payment of the fee of \$2, and that when by reason of such deceit on the part of defendant parties make the excess payment, he keeps that for his own use, on the ground that it is not money belonging to Yuma county. "

The Court in this case had this to say at page 646:

"That the conduct set forth in the first cause of action is improper and unethical is obvious to any right-minded person. Any officer who gives a citizen to understand in any manner that the law requires a fee for the performance of a duty in excess of the legal one, and who retains such excess, when paid, for his own use, is certainly guilty of the most reprehensible conduct, which comes perilously near to being a criminal offense, if it is not actually such. Indeed, counsel for defendant in his brief and in his argument before this court did not attempt to defend the conduct of his client, but contended solely that, regardless of what the moral aspects of the situation may be, Yuma county is not entitled to recover the money which the client has collected. This, of course, is the only legal question before us, and we proceed to consider it. In so doing we shall discuss the two causes of action separately."

Hon. Mark Morris

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From the reading of this case, and the cases supra, one can readily see the nefarious methods that could be fostered upon the public.

CONCLUSION.

Therefore, in conclusion, we are of the opinion that the acceptance of "tips" by Recorders for issuing marriage licenses, although they may be received outside of office hours, is against public policy and is condemned by the law.

Respectfully submitted

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APPROVED:

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ERC: RW