

RECORDERS OF DEEDS: It is discretionary with recorder whether deputy shall perform his duties in office of recorder to the exclusion of some other designated place in county.

September 10, 1942

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Honorable Arthur U. Goodman, Jr.
Prosecuting Attorney
Kennett, Missouri

Dear Mr. Goodman:

This is to acknowledge receipt of your letter of August 29, in which you request an official opinion from this department. Your letter, omitting caption and signature, is as follows:

"I have your letter of the 27th inst. with enclosure but neither contains the information desired.

"The question is: Can the Recorder legally appoint a Deputy Recorder who will not reside in or do any work in his office in the county seat and whose sole duty and function as Deputy Recorder would be the issuance of marriage licenses upon proper application being filed therefor?

"As I understand your opinion to Paul E. Bradley, particularly Point 2, the person there involved was merely designated as deputy recorder, but the present situation anticipates an appointment exactly like the regular deputy who actually works in the recorder's office.

"Will you please give us an opinion on this point?"

By way of reference, we might state that the opinion to the Honorable Paul E. Bradley referred to in the opinion request, our office ruled that a deputy recorder performs

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the same duties as the recorder, and further, that the recorder of deeds cannot appoint a person as deputy who is not a deputy recorder to issue marriage licenses. We also note from the opinion request that you state that the recorder of deeds contemplates appointing a legally qualified and acting deputy recorder for the purpose of issuing marriage licenses, and your sole question is whether such person must physically perform his work in the office of the recorder of deeds in the county seat of the county.

Section 13160 provides as follows:

"In all counties wherein the offices of clerk of the circuit court and recorder of deeds have been or may be separated, the recorder of deeds may appoint in writing one or more deputies, to be approved by the county court of their respective counties, which appointment, with the like oath of office as their principals, to be taken by them and indorsed thereon, shall be filed in the office of the county clerk. Such deputy recorders shall possess the qualifications of clerks of courts of record, and may, in the name of their principals, perform the duties of recorder of deeds, but all recorders of deeds and their sureties shall be responsible for the official conduct of their deputies. But no recorder now holding office shall appoint such deputy or deputies until he shall have entered into a new bond to the state in such sum, manner and form as is now required by law."

It will be noted from the reading of the above section that it is provided that such deputy recorder shall possess the qualifications of clerks of the courts of record, and "may in the name of their principals, perform the duties of recorder of deeds, but all recorders of deeds and their sureties shall be responsible for the official conduct of their deputies. In this connection, we call attention to Section 13183 which reads as follows:

"If any recorder to whom any deed or other writing, proved or acknowledged according to law, shall be delivered for record: First, neglect or refuse to make an entry thereof, or give a receipt therefor, as required by section 13164; or, second, neglect or refuse to record such deed or other writing within a reasonable time after receiving the same; or; third, record any deed or other instrument in writing before another first brought into his office and entitled to be recorded; or, fourth, record any deed or other instrument of writing untimely or in any other manner than as herein before directed; or, fifth, neglect or refuse to provide and keep in his office such an index as is required by this chapter, he shall pay to the party aggrieved double the damages which may be occasioned thereby, to be recovered by civil action on the official bond of the recorder."

Section 13184 provides as follows:

"If any recorder shall wilfully neglect or refuse to perform any of the duties required by him by this chapter, or shall wilfully perform them in any other manner than is required by law, he shall be deemed guilty of a misdemeanor in office, and proceeded against accordingly; and shall, moreover, forfeit and pay to the use of the county a sum not exceeding three hundred dollars, to be recovered by civil action."

From the reading of the above sections, we find that the law has thrown a safeguard around the acts and conduct of the recorder as well as his deputy, and we do not find any other section in the statutes which particularly precludes a recorder of deeds from allowing his duly qualified

and acting deputy from being at a place other than the office of the recorder's office at the county seat, and it is our view that in absence of any prohibition, or in the absence of a statute which requires the deputy to be at the office of the recorder of deeds, this is wholly a matter within the discretion of the recorder, bearing in mind the statutory penalties heretofore set forth in this opinion for any dereliction of duty on the part of the recorder or his deputy, and it is our view that this is the sole safeguard provided by statute.

We are enclosing an opinion rendered to the Hon. B. D. Hardesty, Circuit Clerk of Lincoln County, dated February 9, 1940, which opinion quotes several of the other sections of the statutes which we think useful in this opinion by way of reference.

CONCLUSION

It is our opinion that it is discretionary with the recorder of deeds whether or not a duly acting and qualified deputy recorder shall perform his duties in the office of the recorder in the county seat of the county, to the exclusion of some other designated place in the county.

Respectfully submitted,

E. RICHARDS CREECH
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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