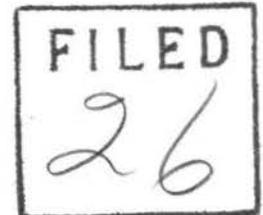


MARRIAGE LAW: House Bill 20. Charging of fees by probate judges and circuit judges in connection with issuance of marriage license.

August 16, 1943

8/19



Honorable Walter A. Eggers  
Judge of the Probate Court  
Perryville, Missouri

Dear Judge Eggers:

Under date of August 5, 1943, you wrote this office requesting an opinion as follows:

"The new Missouri marriage law provides that a Circuit Judge or Probate Judge may, for good cause shown, issue an order directing the Recorder to issue a Marriage License without delay. In other words he may waive the three day waiting period.

"Will you kindly advise whether a Probate Judge is permitted to make a charge for issuing such an order? The statute is evidently silent on this question."

The new Missouri marriage law which is now effective is House Bill No. 20, enacted by the Sixty-second General Assembly, which is as follows:

"Previous to any marriage in this state, a license for that purpose shall be obtained from the officer authorized to issue the same, and no marriage hereafter contracted shall be recognized as valid unless such license has been previously obtained, and unless such marriage is

solemnized by a person authorized by law to solemnize marriages. Before applicants for a marriage license shall receive a license, and before the recorder of deeds shall be authorized to issue a license, the parties to a marriage must at least three days before the date they desire such license to be issued, present an application for the license to the recorder of deeds. Upon the expiration of three days after the receipt of such application, duly executed and signed, the recorder of deeds shall issue the license unless one of the parties withdraws the application. Provided, however, that said license may be issued on order of the circuit or probate court or the judges thereof in vacation of the county in which said license is applied for without waiting three days as herein provided, such license being issued only for good cause shown and by reason of such unusual conditions as to make such marriage advisable. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor. Common law marriages hereafter contracted shall be null and void. Provided, however, that no marriage shall be deemed or adjudged invalid, nor shall the validity thereof be in any way affected on account of any want of authority in any person so solemnizing the same under the next preceding section, if consummated with the full belief on the part of the persons, so married, or either of them, that they were lawfully joined in marriage."

As stated in your letter, this bill makes no provision for the charging of a fee by the circuit or probate courts or the judges thereof in vacation for making an order that a marriage license be issued without the three-day waiting period.

The law is well established in this state that if no compensation is provided for an official act, no charge can be

made and that an officer in claiming compensation for his services must be able to point to the statute authorizing the charge to be made. Nodaway County v. Kidder, 129 S. W. (2d) 857, 344 Mo. 795; Ward v. Christian County, 111 S. W. (2d) 182, 341 Mo. 1115, Smith v. Pettis County, 136 S. W. (2d) 282, 345 Mo. 839.

It is quite obvious that unless a charge for making such order would be authorized by other statutes that no charge could be made.

The compensation of circuit judges is by statute fixed upon a salary basis. Sections 2214, 13387, 13389, 13393, 13394 and 13395, R. S. Mo. 1939. No statute has been found authorizing the judge of the circuit court to charge a fee for his services in making any order.

The judges of the probate courts are compensated upon a different basis, and are authorized to charge fees for their services. Section 13404 contains this authorization and further contains a schedule of fees which the probate judges are authorized to charge for their services. Most of the fees set out in this section relate directly to services in connection with the administration of estates and the whole fee schedule is not copied. But your attention is called to the following clauses:

"For copying any order, or record or paper, not herein provided for, for every hundred words and figures . . . .10

\* \* \*

"For every verdict or judgment . . . .25

\* \* \*

"For recording any settlement or instrument of writing, not otherwise provided for, for every hundred words and figures . . . .10

\* \* \*

"For every certificate and seal . . . .50

\* \* \*

"For filing every paper not herein specified . . . .05 "

If in making the order authorized to be made by House Bill No. 20, enacted by the Sixty-second General Assembly, a probate judge should perform any of the services for which compensation is allowed by Section 13404, and particularly those services herein set out, then such probate judge would be authorized to charge and collect for his services the fees prescribed by this section of the statute.

#### Conclusion

A circuit judge is not authorized by statute to charge fees for services rendered and cannot charge a fee for making an order authorizing the recorder of deeds to issue a marriage license immediately upon the filing of the application and without waiting three days. A probate judge, being authorized to charge fees for his services, may charge the statutory fee fixed for his services for any act he may be required to do, for which a fee is allowed to be charged, in the making of an order to the recorder of deeds waiving the three-day waiting period before the issuance of a marriage license required by House Bill No. 20, enacted by the Sixty-second General Assembly.

Respectfully submitted,

W. O. JACKSON  
Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

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