

RECORDER OF DEEDS: Cannot charge for certified  
CIRCUIT CLERK: copies of papers, but may  
charge fifty cents for certificate.

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February 9, 1943

Mr. Fred R. Rollins  
Circuit Clerk and Recorder  
Platte County  
Platte City, Missouri



Dear Sir:

This is in reply to your letter of February 5, 1943,  
which contains the following request for an opinion:

"Please advise as to the following  
questions.

"Is it right for a Recorder of  
Deeds to charge for making certi-  
fied copies of Marriage License,  
if so how much, if not why not?"

"Is a Recorder of Deeds on a  
salary allowed to retain fees  
for certified copies of any rec-  
ord or filing, for example, certi-  
fying Chattel Mortgages, identi-  
fying notes.

"Is a clerk of the Circuit Court  
on a salary allowed to retain fees  
for certified copies of record or  
filings, other than record of cases  
out on Change of Venue? If so in  
what form to collect and account  
to the County."

Mr. Fred R. Rollins

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Under the last decennial Federal census, the population of Platte County was 13862.

The salary of the circuit clerk of Platte County is governed by Section 13408 R. S. Missouri, 1939, which partially reads as follows:

"The clerks of the circuit courts of this state shall receive for their services annually the following sum: \* \* \* \* \* in counties having a population of ten thousand persons and less than fifteen thousand persons, the sum of seventeen hundred (\$1700) dollars; \* \* \* \* \* in counties having a population of seventeen thousand five hundred persons and less than twenty thousand persons, the sum of twenty-one hundred (\$2100) dollars; in counties having a population of twenty thousand persons and less than twenty-five thousand persons, the sum of twenty-three hundred (\$2300) dollars; \* \* \* \* \*

Provided, it shall be the duty of the circuit clerk, who is ex officio recorder of deeds, to charge and collect for the county in all cases every fee accruing to his office as such recorder of deeds and to which he may be entitled under the provisions of section 13426 or any other statute, such clerk and ex officio recorder shall, at the end of each month, file with the county clerk a report of all fees charged and accruing to his office during such

month, together with the names of persons paying such fees. It shall be the duty of such circuit clerk and ex officio recorder of deeds, upon the filing of said report, to forthwith pay over to the county treasurer, all moneys collected by him during the month and required to be shown in such monthly report as hereinabove provided, taking duplicate receipt therefor, one of which shall be filed with the county clerk, and every such circuit clerk and ex officio recorder of deeds shall be liable on his official bond for all fees collected and not accounted for by him, and paid into the county treasury as herein provided: Provided further, that the clerks of the circuit courts shall be allowed to retain in addition to the sums allowed in this section, all fees earned by him in cases of change of venue from other counties:  
 \* \* \* \* \*

Under the above partial section the salary of the circuit clerk of Platte County is Seventeen Hundred (\$1700.00) Dollars per annum. Also, under the above section, a circuit clerk, who is an ex officio recorder of deeds, must charge and collect all fees accruing to his office as recorder of deeds and pay monthly into the county treasury all fees so collected. Under this partial section the only fees that can be retained by the clerk of the circuit court are fees earned by him in cases of change of venue.

The fees of recorders of deeds are set out in Section 13426 R. S. Missouri, 1939, which reads as follows:

"Recorders shall be allowed fees for their services as follows:

For recording every deed of instrument, for every hundred words.....\$0.10

In addition to the above fee for recording deeds, they shall be allowed for recording every such instrument relating to real estate, a fee of ten cents, as a compensation for making and preserving direct and inverted indexes to every book containing deeds affecting real estate.

For every certificate and seal... .50

For recording a plat of survey, if not more than six courses... .40

For every course above six of the same ..... .02

For copies of plats, if not more than six courses..... .40

For every course above six..... .02"

In your request you ask if a recorder of deeds can retain fees for certified copies of any record, etc. After a thorough research of all the fee sections in regard to a recorder of deeds, we find no authority for a recorder of deeds to charge for certified copies of records, except that he may charge fifty cents for the use of his certificate and seal.

Mr. Fred R. Rollins

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Under Section 13426, supra, the circuit clerk must charge and collect for the county, every fee accruing to his office under the provisions of Sections 13407, 13409 and 13410 R. S. Missouri, 1939.

We find no authority for a circuit clerk to charge for certified copies of a record, except copies that are specifically set out in Section 13407, 13409 and 13410, supra.

In order that a circuit clerk may charge for making any certified copies of any paper, he must place his finger on the statute authorizing it. It was so held in the case of Smith, Judge, v. Pettis County, 136 S. W. (2d) 282, l. c. 285, where the court said:

"The rule is established that the right of a public official to compensation must be founded on a statute. It is equally established that such a statute is strictly construed against the officer. Nodaway County v. Kidder, Mo. Sup., 129 S. W. 2d 857; Ward v. Christian County, 341 Mo. 1115, 111 S. W. 2d 182.  
\* \* \* \* \*

Also, officers are required to perform their duties within the strict limits of their legal authority. It was so held in the case of Lamar Township v. City of Lamar, 261 Mo. 171, l. c. 189, where the court said:

"Officers are creatures of the law, whose duties are usually fully provided for by statute. In a way

they are agents, but they are never general agents, in the sense that they are hampered by neither custom nor law and in the sense that they are absolutely free to follow their own volition. Persons dealing with them do so always with full knowledge of the limitations of their agency and of the laws which, prescribing their duties, hedge them about. They are trustees as to the public money which comes to their hands. The rules which govern this trust are the law pursuant to which the money is paid to them and the law by which they in turn pay it out. Manifestly, none of the reasons which operate to render recovery of money voluntarily paid under a mistake of law by a private person, applies to an officer. The law which fixes his duties is his power of attorney; if he neglect to follow it, his cestui que trust ought not to suffer. In fact, public policy requires that all officers be required to perform their duties within the strict limits of their legal authority. (Underscoring ours.)"

#### CONCLUSION

It is, therefore, the opinion of this department, that a recorder of deeds cannot make a charge for making certified copies of marriage licenses, but may charge fifty cents for the use of his certificate and seal.

Mr. Fred R. Rollins

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It is further the opinion of this department, that a recorder of deeds on a salary is not permitted to retain any fees, but must pay them monthly into the county treasury.

It is further the opinion of this department, that the clerk of the circuit court is not allowed to retain fees for certified copies of the record or filings, and if chargeable should be paid into the county treasury.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General of Missouri

WJB:RW