

DEPUTY RECORDER: Compensation of Deputy Recorder must be paid from fees earned by the office of Recorder of Deeds.

June 15, 1944

Mr. J. M. How
Assistant Prosecuting Attorney
Mississippi County
Charleston, Missouri



Dear Sir:

We acknowledge receipt of your letter of May 29th, 1944, requesting an opinion from this department, which letter, omitting address and signature, is as follows:

"Prior to 1943 the offices of Circuit Clerk and Recorder in this County were combined. January 1st, 1943, they were separated. Mr. Oliver F. Goodin became Recorder of Deeds. It was his intention to appoint Mr. O. T. Dalton as his deputy, but Mr. Dalton was then in the Collector's office and would not be relieved from duty there until after the March settlement of that office. Mr. Oscar I. Oliver was appointed to fill the position of deputy recorder temporarily. Mr. O. T. Dalton began his duties April 3rd, 1943. Mr. Oliver was being paid at the rate of \$1600.00 per year. The compensation agreed upon for Mr. Dalton was \$1700.00 per year. The only record I could find in the County Clerk's office was one made January 12th, 1943, recorded in Book 16 at page 209, merely stating that Oscar I. Oliver was appointed deputy recorder at a salary of \$1600.00 per year. I have failed to find any record whatever of Mr. Dalton's appointment, but I am informed that he has been paid monthly on the basis of \$1700.00 per year.

"In 1943 the fees of the Recorder's office were more than enough to enable the Recorder to retain \$4000.00 and pay the deputy \$1700.00. After the new marriage law was passed, the license fees fell off to such an extent that there seems to be a question as to the fees of the office amounting to \$5700.00 in 1944.

"The question to which an answer is desired is this - If the fees do not amount to \$5700.00 in 1944, is the difference to be paid by the County Court, or is it a matter for the Recorder and his deputy to work out between themselves?

"I find no statute dealing directly with this question. Section 13,187, R. S. Mo. 1939, seems to take it for granted that the fees will be sufficient to pay the deputy after the recorder has retained \$4000.00.

"One of the Judges of the County Court spoke to me about the Recorder's settlements with that court and indicated that the Recorder would like to make his settlements as required by law showing the amounts collected and distributed, but not paying in any surplus at the end of each year, but make the payment at the end of his four year term. It hardly seems to me that this is within the contemplation of the statute, because if he did not make proper payment for the first year, the three year statute of limitations might cause trouble."

Mississippi County, as disclosed by the 1940 census, has a population of 23,149. The Recorder of Deeds of Mississippi County is, therefore, under the provisions of Sections 13160 and 13187, R. S. Mo. 1939, with reference to the appointment of deputies and compensation of the Recorder and such deputies.

Section 13160, R. S. Mo. 1939 provides as follows:

"In all counties therein 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."

Section 13187, R. S. Mo. 1939, provides:

"The recorder of each county in which the offices of recorder of deeds and clerk of the circuit court are separate shall keep a full, true and faithful account of all fees of every kind received, and make a report thereof every year to the county court; and all the fees received by him, over and above the sum of four thousand dollars, for each year of his official term, after paying out of such fees and emoluments such amounts for deputies and assistants in his office as the county court may deem necessary, shall be paid into the county treasury, to form a part of the jury fund of the county."

Section 13160, supra, does not leave to the discretion of the County Court the amount of compensation that should be paid to a deputy recorder.

Section 13187, supra, allows the Recorder of Deeds to retain as his compensation from fees received by him not to exceed \$4,000 per year and, in effect, allows him credit for a reasonable amount paid for deputy hire upon the fees earned by him in excess of the \$4,000 allowance.

It is thus seen that the sole method of compensating a Recorder of Deeds and his deputies in counties such as Mississippi County is from the fees earned by that office. The necessity of deputy hire and the amount to be paid the deputy is left to the reasonable discretion of the County Court and is allowed as a credit to the recorder when he makes his settlement with the County Court.

In State ex rel. Vernon County v. King, 136 Mo. 309, 1. c. 319, the Supreme Court said:

"We are of the opinion, therefore, that the allowance to the recorder of reasonable compensation for necessary hire of assistants was not a matter of mere discretion with the county court. In his settlement, the recorder was entitled to a credit for the amount so paid; * * *"

In the above case it was shown that the Recorder of Deeds had collected in two years \$9,519.00, or \$5,519.00, more than he was entitled to retain as salary and that he actually paid the sum of \$2,810.00 for deputy hire during those two years. Apparently no order was ever made by the County Court fixing the compensation of his deputy. In holding that there could be no recovery against the recorder and his bondsmen, the following was ruled:

"But assuming that the settlement was fairly made, and that the payment of \$4,000 was on account thereof, and that a balance of \$1,519 remained unpaid, yet the amount was subject to the credit of whatever necessary sum was actually paid for the hire of clerks and other assistants. The agreement in respect to the

allowance of such credit should be given as broad a meaning as that given to the statute; that is, that defendant should have a credit for all amounts actually paid by him which were reasonable and necessary for the proper performance of the duties of the office."

The rule with reference to the compensation of officers has been stated in *Nodaway County v. Kidder*, 129 S. W. (2d) 857, 1. c. 860, as follows:

"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. *State ex rel. Evans v. Gordon*, 245 Mo. 12, 28, 149 S. W. 638; *King v. Riverland Levee Dist.*, 218 Mo. App. 490, 493, 279 S. W. 195, 196; *State ex rel. Wedding v. McCracken*, 60 Mo. App. 650, 656.

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. *State ex rel. Buder v. Hackmann*, 305 Mo. 342, 265 S. W. 532, 534; *State ex rel. Linn County v. Adams*, 172 Mo. 1, 7, 72 S. W. 655; *Williams v. Chariton County*, 85 Mo. 645."

CONCLUSION

In the opinion of this department a deputy recorder of deeds in counties such as Mississippi County, Missouri,

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may be compensated only from fees earned by the office of recorder of deeds, and that the county is not liable for his salary and cannot properly pay any part thereof.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK
Attorney General

EBW:CP