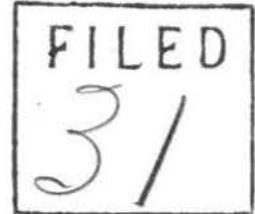


PUBLIC RECORDS: When servicemen become entitled to certified copies of records free of charge. Discharges must be recorded free of charge. Recorders are not authorized by statute to charge for making ~~certified~~ copies of records.

June 11, 1945



Honorable Edwin Frieze
Prosecuting Attorney of
Dade County
Greenfield, Missouri

Dear Mr. Frieze:

Your letter of May 17, 1945, requesting an opinion on charges to be made by County Recorders for making certified copies of marriage licenses, and certified copies of discharges for servicemen, and the recording of discharges of members of the Armed Forces, has been received.

Your letter states:

"Will you kindly render me an opinion as to charges the Recorder of Deeds should make in connection with the following:

"1. Certified copies of Marriage License before one enters the service but obtained for the purpose of securing their allowance for wife and children should they be inducted.

"2. Recording the discharge of members of the armed forces.

"3. Certified copies of Discharges when they are obtained to be used for the purpose of securing employment, or as some case because the soldier wishes to have a copy to carry with him instead of the original.

"I understand that certified copies of discharges needed for making a claim on the government are to be furnished free of charge. Is

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this correct?

"Kindly advise concerning the above, when to charge and what the customary charge is."

Section 3366, Article 2, Chapter 20, R. S. Mo. 1939, requiring marriage licenses to be recorded by the Recorders of Deeds of the several counties of the State, is 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 obtaining the same."

The Kansas City Court of Appeals in the case of State ex rel. Stephens vs. Moore, 96 Mo. App. Rep. 431, construed our marriage license statutes, and particularly the Section requiring the recording of such licenses. In holding that such records are public records, the Court, l.c. 435, said:

"The manifest purpose of the marriage-license statute was to make such licenses, returns thereto, and certificates of marriage, public records so as to give notice to all the world of the occurrence to which they severally relate. Their contents thereby become matters of public knowledge because the law requires them to be kept, authorized them to be used, and secures to all persons access to them, that knowledge of them may be public. * * * "

Section 15077, R.S. Mo. 1939, Article 7, Chapter 121, is as follows:

"Whenever a certified copy or copies of any public record in the state of Missouri are required to perfect the claim of any soldier, sailor or marine.

in service or honorably discharged, or any dependent of such soldier, sailor or marine, for a United States pension, or any other claim upon the government of the United States, they shall, upon request be furnished by the custodian of such records without any fee or compensation therefor."

Said Article 7, Chapter 121, was amended by the Laws of Missouri, 1943, page 643, by adding thereto Section 15077a, which is as follows:

"Any person who is the holder of a discharge from the Armed Forces of the United States may demand that said discharge be recorded by the recorder of deeds of any county in this State, including the recorder of deeds of the City of St. Louis, and it shall be the duty of said recorder of deeds to record said discharge without any fee or compensation therefor."

Section 15077, R.S. Mo. 1939, supra, answers the first one of your inquiries. This Section provides that whenever a certified copy of any public record is required by a serviceman, or by any dependent of such serviceman, for a pension or any other claim upon the Government of the United States, such copies shall be furnished free of charge. But we believe the applicant would, in order to come under the terms of said Section, have to be in the service of the United States, or he would have to have been in the service and be discharged therefrom. Becoming a serviceman would require the administering of the required oath after enlistment or induction, as we view it.

Section 15077a, Laws of Missouri, 1943, page 643, supra, answers the second inquiry in your letter. This Section is positive in its requirement that any serviceman who holds a discharge from the Armed Forces of the United States may have his discharge recorded by the Recorder of Deeds of any county in this State, free of charge.

A careful reading of our statutes does not disclose any statute requiring a Recorder of Deeds to furnish a certified copy of a discharge for a serviceman if the service-

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man wishes to have the copy for the purpose only of securing employment or to carry with him instead of the original.

Reverting to Section 15077, R.S. Mo. 1939, we find that that Section designates the causes or purposes for which a serviceman may obtain a certified copy of any public record free of charge. These grounds are, to perfect the claim of any soldier, sailor or marine in service or honorably discharged, or of any dependent of any such soldier, sailor or marine, for a United States pension, or any other claim upon the Government of the United States.

Following the well-known rule of construction of statutes that where certain subjects and matters are especially mentioned by a statute, all other subjects are thereby excluded from the terms of the statute. This statute, by naming the purposes for which such certified copy of a record may be had free of charge, we think, excludes every other purpose for which such copies would be desired, and consequently, a charge could be made for such certified copies if desired only for the purpose of securing employment or to be carried about by the serviceman.

There is no such thing permitted by law as charging "customary" fees for services performed by public officers. Their services are held in law to be without compensation unless compensation is provided by statute. It was so held by our Supreme Court in the case of Nodaway County vs. Kidder, 129 S. W. (2d) 857, where the Court, l.c. 860, 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. 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. Wedeking 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."

Statutes respecting the charging of fees by public officers are strictly construed against the officers. It is so held in the case of Smith vs. Pettis County, 136 S.W. (2d) 282, l.c. 285, where our Supreme 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. * * * *"

Section 13426, R.S. Mo. 1939, fixing the fees of Recorders, is 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 seal50
 For recording a plat of survey, if not more than six courses..... .40
 For every course above six of the same..... .02

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"For copies of plats, if not
 more than six courses40
 For every course above six02"

Diligent and careful search has failed to discover any other or further statute of Missouri, authorizing Recorders to make any further charge for their services, and we find no statute whatever, permitting Recorders to make a charge for making copies of records of their offices, but they may charge \$0.50 for attaching certificate and seal to a copy of a record, except as is provided in said Section 15077, supra.

CONCLUSION.

It is, therefore, the opinion of this Department:

- 1) That before any person or his dependents under the terms of Section 15077, R.S. Mo. 1939, would be entitled to a certified copy of any public record, free of charge, such person would have to be actually sworn in in the service of the United States Armed Forces, or be discharged from service in such Forces.
- 2) That discharge papers of members of the Armed Forces of the United States must be recorded by Recorders of Deeds in the several counties in this State, free of charge.
- 3) That servicemen would not be entitled to certified copies of discharges free of charge to be used for the purpose of securing employment or merely to have such copies to carry about with them.
- 4) That no fee or charge may lawfully be made by Recorders of the counties of this State for making copies of records in their offices, but they may charge \$0.50 under the provisions of Section 13426, supra, for a certificate and seal attached to a copy of any record in such offices, except those exempted under Section 15077, supra.

Respectfully submitted,

GEORGE W. CROWLEY
 Assistant Attorney General

APPROVED:

J. E. TAYLOR
 Attorney General

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