

RECORDER OF DEEDS: Fees collected by Recorder of Deeds of Jasper County for acknowledging affidavit on application for license to marry must be accounted for, as provided by House Bill No. 897, Laws of Missouri, 1945.

July 28, 1947



*Copy to
A. Smith*

Honorable Ralph Baird
Prosecuting Attorney
Jasper County
Joplin, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you requested an opinion of this department regarding the accountability for fees of the Recorder of Deeds. Said letter reads in part as follows:

"I have at hand a request from the Recorder of Deeds, Jasper County, Missouri, for an opinion from you on the following question:

"Mo. R. S. 1939, Sec. 3366 -

"Licenses to be recorded. 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 \$1.00 to be paid by the person obtaining the same."

"The Recorder's question is, that inasmuch as the above section does not cover any charge by the recorder for the application, should the fee charged by the recorder for each affidavit on the application for marriage license be accounted for by the recorder, and turned into the County Treasury with other fees?

"It seems that it has not been the custom in this county for the recorder to hold himself accountable to the county for the monies derived from such affidavits."

Prior to the 63rd General Assembly, Section 13187, R.S. Mo. 1939, provided for the accounting of fees for recorders of deeds in counties such as Jasper County. However, House Bill No. 775, passed by the 63rd General Assembly, repealed

said Section 13187. House Bill No. 897, passed by the 63rd General Assembly, found in Missouri Laws of 1945, page 1560, relates to the fees and compensation of the recorder of deeds in counties of the second class. Section 1 of said act reads:

"The recorder of deeds, in counties of the second class, shall keep a full, true and faithful account of all fees of every kind received, and shall make a report thereof every year to the county court. He shall retain, as compensation for his services as county recorder, out of the fees received by him, a sum not in excess of \$4000.00 for each year of his official term, and all fees received by him over and above the sum of \$4000.00 for each year of his official term, shall be paid by him into the county treasury, to form a part of the jury fund of the county."

Section 2 of said act reads:

"It shall be the duty of the recorder of deeds to charge, receive and collect in all cases every fee, charge, or money due his office by law. He shall also, when he makes and files the report herein required at the end of each year of his official term, verify the same by affidavit, and said report shall show the source and amount of every fee or charge collected. All fees, charges and moneys collected by the recorder of deeds in excess of the amount to which he is entitled for compensation as herein provided, shall be the property of the county."

In this act the Legislature has provided for the method of compensation for the recorder of deeds in counties such as Jasper County. In *Nodaway County v. Kidder*, 344 Mo. 795, the court said at l.c. 801:

"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.)"

Such fees as he might receive for affidavits on an application for license to marry are fees the recorder collects by virtue of the duties of his office, and the above quoted Section 1 seems clear in its language when it says that all fees of every kind shall be accounted for.

CONCLUSION

Therefore, it is the opinion of this department that any fees the Recorder of Deeds of Jasper County might collect for affidavits on an application for license to marry are fees that are to be accounted for, as provided in Section 1 of House Bill No. 897 of the 63rd General Assembly, supra. Such fees shall be retained by him as compensation, the sum of which from all fees shall not exceed \$4000.00 for each year of his official term.

Respectfully submitted,

APPROVED:

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WCC:LR