

Notes: Conclusion No. 7 of this opinion has been withdrawn. See memo 10/13/60 + op. to Parker #29 10/13/60.

FEES AND SALARIES: 1. The \$750.00 increase in annual compensation for recorders of deeds of third class counties where-
MARRIAGE LICENSES: in the office of recorder of deeds and circuit
MORTGAGES: clerk are separate, provided by Senate Bill No. 42,
PUBLIC OFFICERS: 67th General Assembly, shall be prorated for the
RECORDER OF DEEDS: year 1953. 2. Such recorders of third class
counties are not entitled to the fee provided by Section 59.490, for recordation of discharges of veterans after the effective date of said bill. 3. The basic fee for issuance and recordation of marriage licenses is \$1.00. The recorder is entitled to 25¢ for each affidavit that is reasonably necessary in determining the age of the applicants if there be reasonable doubt that such applicants, or either of them, are under the legal age for marriage. Further, that if one or both of the applicants are of an age that requires the consent of a parent or guardian, the recorder is entitled to 50¢ for his certificate and seal that such consent has been given. 4. Punctuation marks, dollar signs and numerals are not to be considered "words" in computing recorders' fees under Section 59.310, V.A.M.S. 5. The recorder of deeds is not authorized to satisfy of record a chattel mortgage merely upon the presentation by the mortgagor of the original note marked paid. Such satisfaction of record shall be in accordance with Section 443.490.

January 20, 1954

Honorable Cletis J. Capps
Recorder of Deeds
Stoddard County
Bloomfield, Missouri



Dear Sir:

By letter of November 21, 1953, you requested an official opinion answering five questions you raised concerning the compensation and duties of recorders of deeds in third class counties, wherein the office of recorder of deeds and circuit clerk are separate.

All statutory citations are Revised Statutes of Missouri, 1949, unless otherwise noted.

Since four of the five questions you raise deal with compensation of recorders, it may be well to here quote certain basic principles regarding the compensation of public officials. The Supreme Court of Missouri in *Nodaway County vs. Kidder*, 344 Mo. 795, 129 S.W. (2d) 857, l.c. 860, made this observation concerning compensation to public officials:

"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

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must be strictly construed as against
the officer. * * *

The Kansas City Court of Appeals in Holman vs. City of Macon, 155 Mo. App. 398, l.c. 402, 403, 137 S.W. 16, stated those principles in the following manner:

"* * * A recognized rule of statutory construction is that a public officer cannot demand any compensation for his services not specifically allowed by statute and that statutes fixing such compensation must be strictly construed. (State ex rel. v. Patterson, 152 Mo. App. 264, 132 S.W. 1183). * * *"

Thus in answering each of your questions concerning compensation we must first determine if there is statutory provision for compensation; and if there be a doubtful statute, that statute must be strictly construed, and compensation denied unless clearly set forth in such statute.

Keeping the above in mind we come now to your question No. 1 which reads as follows:

"Under Senate Bill #42, 67th General Assembly, 3rd Class County Recorder's were granted a \$750.00 yearly raise. Can this whole amount be retained for the year 1953. * * *"

Said Senate Bill No. 42 now appearing as Section 59.250 and 59.365, V.A.M.S., 1953, Cumulative Annual Pocket Part reads as follows:

"59.250. Fees, class three counties--accounts and annual report--amount retained--disposition of balance

"1. The recorder of deeds in counties of the third class, wherein there is a separate circuit clerk and recorder, shall keep a full, true and faithful account of all fees of every kind received. He shall make a report thereof each year to the county court.

"2. All other fees over and above the sum of four thousand seven hundred fifty dollars for each year of his official term, seven hundred

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fifty dollars of which shall be compensation for the performance of duties imposed by section 59.365 and four thousand dollars for other duties imposed by law, shall be paid into the county treasury after paying out of such fees and emoluments such amounts for deputies and assistants in his office as the county court may deem necessary. As amended Laws 1953, p. _____, S.B. No. 42, Sec. 1."

"59.365. Recorder to furnish list of land transfers to assessor

"The recorder of deeds of each county of the third class wherein there is a separate circuit clerk and recorder shall furnish the county assessor of his county, or the township assessors in counties with township organization, on or before the fifteenth day of each month a true and complete list of all real estate transfers completed in such county or townships, in counties with township organization, during the preceding month. The list so furnished shall contain the following information relating to each such transfer:

- (1) The names of the grantor and grantee;
- (2) The consideration paid;
- (3) A brief description of the real estate transferred; and
- (4) The book and page number where each deed is recorded. Laws 1953, p. _____, S.B. No. 42, Sec. 1 (59.365).

Effective 90 days after May 31, 1953, date of adjournment of Legislature."

These two sections became effective ninety days after adjournment of the Missouri Legislature from May 31, 1953. The effective date is thus, August 29, 1953. These two sections prescribe an additional duty for the recorder of deeds, and provide compensation of \$750.00 annually for the performance of this new duty.

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The Constitution of Missouri, 1945, by Article VII, Section 13, prohibits an outright increase of compensation of county officers during their current term of office, as follows:

"Sec. 13. Limitation on increase of compensation and extension of terms of office.
--The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended."

Therefore, the only theory upon which current recorders are entitled to the \$750.00 annual increase of salary is on the basis that it is compensation for the added duty. The Legislature contemplated \$750.00 as compensation for an entire year of performance of the duty prescribed by Section 59.365. Since that additional duty will be performed only for the portion of 1953, after the effective date of the bill, the increase in salary must be prorated.

Your question No. 2 reads as follows:

"Can separate Recorders in 3rd Class Counties still collect the fees to which they are entitled under Section 59.490, or was this repealed by the passage of Senate Bill #42 referred to above."

Section 59.490 reads as follows:

"List of veterans, class three counties--copies of discharge--fees.--In all counties of the third class wherein the offices of the circuit clerk and recorder of deeds are separate, the recorder of deeds shall, in addition to the duties imposed upon him by law, and by virtue of this chapter, have the additional responsibility to prepare and keep a separate alphabetical list of the names of all residents of the county who have been discharged from the armed forces of the United States, which list shall show such veteran's name, post office address, and the branch of service from which he was discharged, the date of his discharge and the date of the recording of

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same, together with the book and page wherein such discharge is so recorded, which list shall be maintained by the recorder for public inspection and shall be up to date at all times; and in addition thereto, said recorders in the said counties shall have the additional responsibility of furnishing to all persons who have so reported their discharge from the armed forces of the United States one certified copy of such discharge upon request of such veteran, or if such veteran shall have deceased since the recording thereof, then by his heir, executor or administrator. For each name which the recorder shall append to the aforesaid alphabetical list, and for each certified copy of such discharge as he shall furnish, the said recorder shall receive the sum of fifty cents, to be paid out of the county treasury, which fees shall not be deemed to be accountable fees in determining the maximum amount which the recorder may retain as set forth in section 59.250; provided, however, that no such recorder shall be paid for the listing of any nonresident of the county, nor for the listing of any such discharge which has previously been so listed in any county, nor for any additional verified copy after the first. A veteran shall be deemed a resident of the county for the purposes of this section if he shall have resided in the county prior to his induction into the armed forces, and shall have returned there upon his discharge, or if he shall have resided in the county for more than ninety days next prior to the recording of such discharge with the intention of making the county his domicile."

Section 59.250, RSMo 1949, which was repealed by Senate Bill No. 42 specifically exempted from its provisions those fees listed in Section 59.490. However, Senate Bill No. 42 does not so exempt those fees received for recording discharges of veterans. On the contrary, Senate Bill No. 42 says: "All other fees over and above the sum of \$4,750.00 for

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each year." If we are to follow the mandate of the cases cited at the beginning of this opinion, and strictly construe Senate Bill No. 42, we must conclude that said bill in repealing a section which specifically exempted from its provisions those fees received for recording veterans' discharges, but in itself making no mention thereof, leaves no choice but to declare that it was the intention of the Legislature to limit the annual compensation of recorders of this particular class and type of county to an annual compensation of \$4,750.00. Thus the recorder is not entitled to receive from the county treasurer the sum of 50¢ for each recorded discharge.

Your question No. 3 reads as follows:

"What is the total fee, that is allowable for the issuance of marriage licenses."

The recorder is entitled to a fee of \$1.00 for recording a marriage license. This is authorized by Section 451.150, which reads 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."

Section 451.080 prescribes the form of the marriage license as follows:

"1. The recorders of the several counties of this state, and the recorder of the city of St. Louis, shall when applied to by any person legally entitled to a marriage license, issue the same which may be in the following form:

"State of Missouri,)
) ss.
County of _____,)

This license authorizes any judge, magistrate, licensed or ordained preacher of the gospel, or other person authorized under the laws of this state, to solemnize marriage between A B of _____, county of _____ and state of _____, who is _____ the age of _____

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twenty-one years, and C D of _____, in
the county of _____, state of _____,
who is _____ the age of eighteen years.

"2. If the man is under twenty-one or the
woman under eighteen, add the following:

The father or mother or guardian, as
the case may be, of the said A B or C D
(A B or C D, as the case may require),
has given his or her assent to the said
marriage.

Witness my hand as recorder, with
the seal of office hereto affixed, at my
office, in _____, the _____ day of
_____, 19 _____.

_____, recorder."

The above section requires the certificate of the recorder
and the seal of his office upon the marriage license if
either, or both of the parties to the marriage are under
the ages therein specified. Section 59.310, V.A.M.S. reads
in part as follows:

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

"For every certificate and seal50

* * * "

Section 451.090 prohibits issuance of a marriage license
by a recorder to persons under certain designated ages. A duty
is thus imposed upon the recorder to use reasonable care and
diligence in ascertaining the ages of the parties to the marriage
license. There is no statutory provision for the method by
which the ages of doubtful persons may be ascertained. However,
it is reasonable that the recorder may require affidavits from
the parties as to their correct age, when there may be reason-
able doubt as to whether the parties are of sufficient age to
contract marriage.

Section 59.150 authorizes the administration of oaths
by recorders as follows:

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"Hereafter whenever, under any law of this state relating to the duties of the recorder of deeds in any county of this state, it becomes necessary for any person to be sworn to any statement, affidavit or other papers of any kind, the recorder of deeds shall be authorized to administer an oath to any person in matters relating to the duties of his office, with like effect as clerks of courts of record; provided, he use his seal of office to the jurat, as clerks of courts of record do. He shall receive the same compensation allowed by law for like service as clerks of courts are now allowed."

Since no specific fee is authorized for recorders we must look to the fees allowed to clerks of courts of record for administering an oath to an affidavit. By Section 483.540, clerks of circuit courts and courts of common pleas, are allowed 25¢ for oaths and certificates to affidavit, subsection reading in part as follows:

"The clerks of the several circuit courts of this state, and of the courts of common pleas, shall receive in all civil proceedings the following fees for their services:

* * *

"For oath and certificate to affidavit .25
* * *"

In recapitulation then it is concluded that recorders are entitled only to a fee of one dollar for recordation of a marriage license, unless there is reasonable doubt that one or both of the parties to the marriage are not of sufficient age. The recorder may then take such affidavits as are reasonably necessary to ascertain the correct ages of those persons whose age is in doubt, and for each affidavit he may charge a fee of 25¢. If one or both of the parties are of such tender age as to require the consent of their parent or guardian, the recorder is required to make a certificate that such consent has been given and affix his seal thereto. For such certificate and seal the recorder is entitled to a fee of 50¢.

Question No. 4 reads as follows:

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"Recorders are allowed 20 cents per hundred words for recording. What constitutes a word. (Are punctuation marks, dollar signs, numerals, etc. words.)"

This matter has been decided by two previous opinions of this office. Those two opinions, which are enclosed are: Hon. W. E. Freeland, Jefferson City, Missouri, under date of June 3, 1937, Hon. Duffy J. Hudnall, Clerk of the Circuit Court, Scotland County, Memphis, Missouri, under date of May 11, 1935.

Your question No. 5 reads as follows:

"What is the legal procedure in releasing chattel mortgages. (The reason for this question is that one of the small loan companies, who use a continuing type of chattel insist that such chattel cannot be released by the presentation of the original note marked paid, but that the original chattel must be produced)."

Section 443.490 prescribes the methods by which chattel mortgages and deeds of trust may be satisfied as of record.

"1. Such recorder shall enter in a book, to be provided by him for such purpose, the names of all the parties to such instrument, arranging the names of such mortgagors or grantors alphabetically, and shall note thereon the time of filing such instrument or copy, for which said recorder shall receive a fee of twenty cents. Said fee shall also include and cover all costs for discharging said mortgage or deed of trust according to the methods herein provided.

"2. Such mortgage or deed of trust, when satisfied, shall be discharged by any of the following methods:

"(1) By the mortgagee, cestui que trust, his agent or assigns, on the margin of such index, which shall be attested by the recorder;

"(2) Upon the presentation by the mortgagor or grantor of the original mortgage

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or deed of trust, and upon such mortgagor or grantor making affidavit before such recorder that the instrument presented by him is the original of the copy on file, and that such mortgage or deed of trust has been fully paid and satisfied;

"(3) Upon presentation or receipt of an order in writing, signed by the mortgagee or cestui que trust thereof, attested by a magistrate, or any notary public, stating that such instrument has been paid and satisfied.

"3. When any of these provisions have been complied with, it shall be the duty of the recorder to enter in a column for that purpose the word 'satisfied,' giving date. When a chattel mortgage shall be satisfied as above provided, the recorder may deliver said mortgage to the holder of the note secured thereby, or, if the holder of said note refuse to receive the same the recorder may destroy said mortgage; provided, that the recorder may deliver to the parties entitled thereto, or destroy all such mortgages now remaining on file in his office and which have been entered satisfied on the chattel mortgage register." (Emphasis theirs)

A careful examination of the above does not disclose the provision whereby the recorder may satisfy of record a chattel mortgage upon the sole basis of presentation by the mortgagor of an original note marked paid.

CONCLUSION

It is therefore, the opinion of this office that:

1. The \$750.00 increase in annual compensation for recorders of deeds of third class counties wherein the office of recorder of deeds and circuit clerk are separate, provided by Senate Bill No. 42, 67th General Assembly, shall be prorated for the year 1953.

2. Such recorders of third class counties are not entitled to the fee provided by Section 59.490, for recordation of discharges of veterans after the effective date of said bill.

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3. The basic fee for issuance and recordation of marriage licenses is \$1.00. The recorder is entitled to 25¢ for each affidavit that is reasonably necessary in determining the age of the applicants if there be reasonable doubt that such applicants, or either of them, are under the legal age for marriage. Further, that if one or both of the applicants are of an age that requires the consent of a parent or guardian, the recorder is entitled to 50¢ for his certificate and seal that such consent has been given.

4. Punctuation marks, dollar signs and numerals are not to be considered "words" in computing recorders' fees under Section 59.310, V.A.M.S.

5. The recorder of deeds is not authorized to satisfy of record a chattel mortgage merely upon the presentation by the mortgagor of the original note marked paid. Such satisfaction of record shall be in accordance with Section 443.490.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

PMcG:vlw