

FEEES: Money received by the recorder of deeds for
RECORDER OF DEEDS: making xerox copies of legal documents on
file in his office must be reported as "fees"
accountable in a second class county as prescribed by Section
59.230, Mo. Supp. 1963.

Money received by the recorder of deeds for making credit
search and selling lists of chattel mortgages to various banks
and loan companies does not constitute funds recoverable by the
county as "fees" accountable under Section 59.230, Mo. Supp. 1963,
or as money collected under color of office.

OPINION NO. 167 (1965)
OPINION NO. 13 (1966)

February 4, 1966

Honorable Don E. Burrell
Prosecuting Attorney
Greene County
Springfield, Missouri



Dear Mr. Burrell:

This is in answer to your request for an opinion of this
office concerning certain funds collected by the recorder of
deeds in Greene County, a county of the second class.

I "

Your first question reads as follows:

"(1) Assume that the Recorder of Deeds
charges money to attorneys and members of
the general public, for making and deliv-
ering uncertified photo-copies of legal
documents on file in that office which
are produced on the ZEROX copying machine
which is owned by the county and operated
by the employees whose wages are paid by
the county, or out of funds which other-
wise would accrue to the benefit of the
county. Is this money, which is received
by the Recorder of Deeds for these copies,
money which should be reported as fees
collected by his office and paid over to
Greene County; or, is the Recorder of
Deeds entitled to keep this money as com-
pensation in addition to his salary as
prescribed by law?"

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The duties to be performed by recorders of deeds for which they shall charge fees are listed in Section 59.310, RSMo 1959, together with the amount of the fees to be charged. Included therein is:

"For copying any recorded instrument, for every one hundred words . . . \$.20."

In counties of the second class these fees may be retained by the recorder of deeds in an amount not in excess of \$5,000 for each year of his official term and all fees received by him in excess of this amount must be paid into the county treasury. Section 59.230 RSMo Supp. 1963.

In answer to your first question, it is our opinion that fees received by the recorder of deeds in Greene County for making Xerox copies of legal documents on file in his office must be reported as fees collected by his office and included in the fees which may be retained or paid over to the county in accordance with Section 59.230. Such fees may not be retained by the recorder as compensation in addition to that provided by this section.

In answer to your third question which reads as follows:

"(3) In the situation (1) above, would your opinion be different if the Recorder of Deeds purchased and paid for out of his own funds, the copy paper used in preparing the photo-copies."

It would make no difference if the recorder of deeds purchased and paid for out of his own funds the copy paper used in preparing the photo-copies. He is performing his duties required of him by statute and the fees he receives still must be reported and disposed of in accordance with Section 59.230, Mo. Supp. 1965.

II

Your second question is as follows:

"(2) In the second situation, assume that the beginning of each week day, the Recorder of Deeds has his employees, whose wages are paid by the county or out of funds which otherwise would accrue to the benefit of the county, prepare a credit search of the chattel records on individuals requested by

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lending institutions, which chattel mortgages have been filed in the office of the Recorder of Deeds on the previous day, and supplies a list to various banks and loan companies in Greene County and in return receives a monthly payment from them for these lists. Is this money so received money which should be reported and paid over to the county; or, is the Recorder of Deeds entitled to keep this money as compensation in addition to his salary as prescribed by law."

In answer to this question we enclose an opinion written on August 4, 1953, to the Honorable Raymond H. Vogel, Prosecuting Attorney for Cape Girardeau County in which we held, among other things, that money received by a county recorder for the preparation, sale and distribution of chattel mortgage lists and lists of deeds of trust was not received for the performance of any statutory duty; was not obtained under color of office; and the county was not entitled to be reimbursed for such money on the theory either that these were fees which the recorder is required to account under Section 59.250, RSMo 1949 (third class counties) or under the theory that such money was collected under color of office. This conclusion was based in part upon the decision of the court in Yuma County v. Wisener, 46 P.2d 115. Later cases supporting this ruling are Webster County v. Nance, (Ky. 1962), 362 SW2d 723 and Nueces County v. Currington, et al, (Tex. 1941), 151 SW2d 648. See also 99 A.L.R. 642. However, we observe that this practice of conducting a private enterprise on county property and at county expense is questionable and should not be condoned.

CONCLUSION

Money received by the recorder of deeds for making Xerox copies of legal documents on file in his office must be reported as "fees" accountable in a second class county as prescribed by Section 59.230, Mo. Supp. 1963. This is true even though the recorder personally pays for the copy paper.

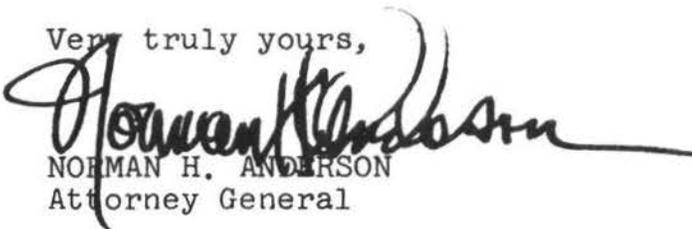
Money received by the recorder of deeds for making a credit search and selling lists of chattel mortgages to various banks and loan companies does not constitute funds

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which may be recovered by the county as "fees" accountable under Section 59.230 or as money collected under color of office.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John H. Denman.

Very truly yours,

A handwritten signature in black ink, appearing to read "Norman H. Anderson", written in a cursive style. The signature is positioned above the typed name and title.

NORMAN H. ANDERSON
Attorney General

Enclosure:

Opinion to Vogel, 8-4-53