

MARRIAGES:
MAGISTRATES:
COMPENSATION:
CONSTITUTIONAL LAW:

Section 24, Article V of the Missouri Constitution prohibits magistrates from receiving any compensation for solemnizing marriages.

OPINION NO. 71

March 16, 1972

Honorable Frank Bild
Representative, District 47
Room 202I, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Bild:

This opinion is in response to your question asking whether magistrates may accept fees, gifts or gratuities for performing marriage ceremonies.

Section 451.100, RSMo 1969, with respect to the solemnization of marriages provides:

"Marriages may be solemnized by any clergyman, either active or retired, who is a citizen of the United States, and who is in good standing with any church or synagogue in this state, or by any judge of a court of record. Marriages may also be solemnized by a religious society, religious institution, or religious organization of this state, according to the regulations and customs of the society, institution or organization, when either party to the marriage to be solemnized is a member of such society, institution or organization."
(emphasis added)

The magistrate courts are courts of record, Section 476.010, RSMo 1969, within the meaning of the above section.

Section 24 of Article V of the Missouri Constitution, as recently amended, provides:

"All judges and magistrates shall receive as salary the total amount of their present compensation until otherwise provided by law, but no judge's or magistrate's salary shall be diminished during his term of office. No judge

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or magistrate shall receive any other or additional compensation for any public service, or practice law or do law business. Judges and magistrates may receive reasonable traveling and other expenses allowed by law. The fees of all courts, judges, and magistrates shall be paid monthly into the state treasury or to the county paying their salaries, as provided by law." (emphasis added)

In our Opinion No. 26, dated December 31, 1946, to the Honorable Walter A. Eggers, copy enclosed, we considered the same question at some length and held that magistrates are not required to solemnize marriages; but if they do so, they may not require a fee.

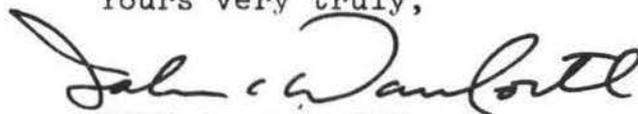
We also note that there is no statutory authority for a magistrate to compel the payment of a fee and no fee authorized for the service of solemnizing marriages. However, marriages are performed in such a case by virtue of the office. Cf., Ward v. St. Louis County, 183 S.W.2d 68 (Mo. 1944). And, in our view, any compensation received for such service regardless of whether it is called a fee or gratuity and whether or not it is voluntary or involuntary constitutes "additional compensation" within the prohibition of Section 24, Article V of the Constitution.

CONCLUSION

It is the opinion of this office that Section 24, Article V of the Missouri Constitution prohibits magistrates from receiving any compensation for solemnizing marriages.

The foregoing opinion, which I hereby approve, was prepared by my assistant John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 26
12-31-46, Eggers