RECORDER'S FEES: Recorder of Deeds is not entitled to compensation for making certified copies, but is entitled to fifty cents for his certificate.

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Hon. John P. English,
Recorder of Deeds,
St. Louis, Missouri.

Dear Sir:

This will acknowledge receipt of your inquiry which is as follows:

> "On October 17th, 1935 we issued two certified copies of Trust Deeds to a Mr. O'Herin, as you will note in the enclosed correspondence which I forward to you.
>
> "This matter is now in the hands of Mr. John Dickinson, Ass't. Attorney General, whom I advised how we derived the prices of the above copies.
>
> "I advised him that we operate under Section 11805 of the State Statutes when making a certified copy of our records. This being the only Section covering a fee for the issue of same, this office has been authorizing a fee of 15¢ per 100 words as described in said section. If you will be kind enough to take this matter further with Mr. Dickinson it will be greatly appreciated, as you will note I referred him to you.
>
> "After consulting our correspondence with Mr. Dickinson, kindly advise me as to your opinion."

Along with the same is attached correspondence with Mr. John Dickinson, Assistant Attorney General, Department of Justice, Washington, D. C.

Section 11805, R. S. Mo. 1929, referred to by you, does not apply to the amount of fees to be charged by your office for copying and authenticating records on file therein. That section states: "The state shall be entitled to fees for services to be rendered by the secretary of state as follows", and the provisions thereof with reference to fees apply only to the fees which may be charged by the secretary of state's office.

Section 11804 is the section which prescribes the fees which may be charged by recorders for their services, and sets them forth as follows:

"For recording every deed of instrument, for every hundred words	$ .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 seal	.50
For recording a plat of survey, if not more than six courses	.40
For every course above six of the same..	.02
For copies of plats, if not more than six courses	.40
For every course above six	.02"

Section 1692 provides as follows:

> "In all cases where the original of any bond, contract or other instrument, for the recording of which provision has been made by law, shall appear to be lost, or not within control of the party wishing to use the same, the record thereof, or a transcript of such record, certified by the custodian thereof, under the seal of his office, may be read in evidence without further proof, in like manner and with like effect as in the case of the loss of duly recorded instruments affecting real estate."

Sections 11561, 3048, 3049, 3039 and 3057 define certain powers of the recorder of deeds, but we do not find any statute in Missouri which makes it the duty of the recorder of deeds to furnish certified copies of instruments on file in his office.

Statutes with respect to fees must be strictly construed and compensation to the recorder for his official services performed is allowed only where there is statutory provision made for the payment thereof. If there is no statute providing for his compensation, he is not entitled to compensation, notwithstanding the law may make it his official duty to perform certain services.

In the case of State ex rel. Troll v. Brown, 146 Mo. 401, l. c. 406, the Supreme Court of this state says:

> "It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly construed. State ex rel. v. Wofford, 116 Mo. 220; Shed vs. Railroad, 67 Mo. 687; Gammon v. Lafayette Co., 76 Mo. 675. In the case last cited it is said: 'The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform as such officer, unless the statute gives it. When the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services.' Williams v. Chariton Co., 85 Mo. 645."

In the case of State ex rel. v. Gordon, 245 Mo. 12, l. c. 27, the Supreme Court of this state declares as follows:

> "Compensation to a public officer is a matter of statute, not of contract; and it does not depend upon the amount or value of services performed, but is incidental to the office.

"Throop on Public Officers (Sec. 443) says: 'It has been often held, that an officer's right to his compensation does not grow out of a contract between him and the State. The compensation belongs to the officer, as an incident of his office, and he is entitled to it, not by force of any contract but because the law attaches it to the office.'

"Mechem on Public Offices and Officers says: 'Sec. 856. Unless, therefore, compensation is by law attached to the office, none can be recovered. A person who accepts an office to which no compensation is attached is presumed to undertake to serve gratuitously, and he cannot recover anything upon the ground of an implied contract to pay what the service is worth.' * * * *

"In Bank v. Refrigerating Co., 236 Mo. 414, Brown, J., speaking for the court, says: 'When the law requires a specific service to be performed by a public officer, he must perform that service regardless of whether any provision has been made to pay him for same.'

"Not only is the right to compensation dependent upon statute, but the method or particular mode provided by statute must be accepted. On this point the Kansas City Court of Appeals says: 'It seems the general rule in this country, as announced by the decisions and text-writers, that the rendition of services by a public officer is to be deemed gratuitous, unless a compensation therefor is provided by statute. And further, it seems well settled that 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 the same. * * *'"

And at page 29 the Court says:

> "As the Legislature may fix such compensation to a public office as it sees fit, or none at all, we can see no constitutional objection to its attaching such conditions as it deems proper to the payment of the compensation, such conditions to be binding upon any one who thereafter enters upon such office and performs its duties. As stated above, the compensation has no relation to the amount or value of the service. There can be no application of the doctrine of quantum meruit. The officer takes the office cum onere. Having accepted it with the conditions imposed by the Legislature, upon whose will he must depend for any compensation at all, he cannot afterwards challenge the power of the Legislature to impose such conditions."

In the case of King v. Riverland Levee District, 279 S. W. 195, the court says, l. c. 196:

> "It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creation of the law and then is incidental to the office. * * * * Furthermore, our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking v. McCracken, 60 Mo. App. loc. cit. 656, to the effect that the rendition of services by a public officer is to be deemed gratuitous unless a compensation therefor is provided by statute, and that if by statute compensation is provided for 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 the same."

It would seem that if the Legislature's attention was called to the fact that there is no statute authorizing compensation to a recorder of deeds for making certified copies of instruments in his office, that body would remedy the situation, but until they have so remedied it by passing a law which clearly gives the recorder such compensation, he is not entitled to it. We can only construe the law as written.

CONCLUSION

It is our opinion that the recorder of deeds is not authorized by law to collect a fee for making certified copies of instruments on file and of record in his office, but he is entitled to a fee of fifty cents for affixing his certificate to copies thereof when made.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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