

FEEES: Circuit clerk entitled to charge for certified copies of naturalization papers and marriage licenses.

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Mr. Virgil B. Hunt,
Clerk, Circuit Court,
Livingston County,
Chillicothe, Missouri.

Dear Sir:

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

"I have so many requests for copies of marriage license and certified copies of naturalization papers to be used by persons applying for old age pensions and would like to know if I am permitted to charge for these copies."

Section 11785, R. S. 1929, provides that

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

* * *

For copies of records and papers,
for every hundred words \$.10

* * *

For certificate and seal50"

Section 11804, R. S. 1929, provides that

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

* * *

For recording every deed of instrument, for every hundred words \$.10

* * *

For every certificate and seal50"

The naturalization laws of the Federal Government found at page 3813, R. S. 1929, provide that the clerk in naturalization cases shall charge, collect, and account for certain fees, as follows:

"(1) For receiving and filing a declaration of intention and issuing a duplicate thereof, \$5:

"(2) For making, filing and docketing a petition for citizenship, and issuing a certificate of citizenship if the issuance of such certificate is authorized by the court, and for the final hearing on the petition, \$10."

The same naturalization laws found at page 3817, R. S. 1929, state:

"It shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings, to demand, charge, collect, or receive any other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified; and a violation of any of the provisions of this section or any part thereof is declared to be a misdemeanor * * *."

Section 2979, R. S. 1929, provides:

"The recorder shall record all marriage licenses issued in a well-bound book kept for that purpose, with the return thereon * * *."

Section 1705, R. S. 1929, provides:

"The record books of marriages to be kept by the respective recorders, in pursuance of the provisions of law, and copies thereof, certified by the recorder under his official seal, shall be evidence in all courts."

In the case of State ex rel. v. Board of Police Commissioners, 108 Mo. App. 98, l. c. 104, it is stated:

"As contended by the appellant, an officer of the court claiming fees for services must be able to put his finger on some statute expressly allowing the fee he claims, and if he is unable to do so he is not entitled to the fees. (Citing cases.) And it is also true that statutes regulating costs should be strictly construed. But it is equally true that the Legislature has provided compensation in the way of fees to the clerks of the circuit courts for services which the law requires them to render and when it appears they have rendered such services they ought not to be deprived of the fees allowed for like services because the extraordinary and particular procedure in which the services were rendered is not specifically named in the statute."

It will be noted that the Federal statutes having to do with the fees that the clerk of the court may charge in naturalization proceedings limit and fix the amount of fees that may be charged for services therein, but that is quite a different question or subject-matter from your inquiry, which we construe to be, are you as circuit clerk and ex-officio recorder of deeds entitled to charge a fee for furnishing to another at his request a certified copy of naturalization papers or records on file in your office? The Federal statute does not pretend to regulate the fees that you in your official capacity may charge for furnishing certified copies of records of your office. It merely defines the amount of fees that may be charged by the clerk of the court in which the naturalization proceedings take place for the services performed by that clerk in the process of the naturalization of the alien.

Section 11785, R. S. 1929, by its terms defines the fees that the clerk of the circuit court shall charge "in all civil proceedings."

From an examination of the statutes, we have not found a statute in terms requiring the circuit clerk, as a part of the performance of his official duties, to furnish certified copies of naturalization papers, nor requiring the recorder or

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circuit clerk and ex-officio recorder to furnish certified copies of marriage licenses. It would seem that the law contemplates that they are the logical parties to furnish certified copies if and when the same are furnished because they have charge of the records thereof, but it appears to us as unreasonable that they should be required under the present statutory law to furnish certified copies of either naturalization papers or marriage licenses without compensation therefor. If they were so required to furnish them, then their time might be entirely taken up by some person or persons who ordered from or asked them to furnish such certified copies. There would be nothing to prevent one person from going into the clerk's office and ordering a certified copy of each of those papers on file in the office. It appears to be the logical view that such an officer in furnishing certified copies of marriage licenses or naturalization papers acts in his individual capacity and is entitled to a reasonable compensation for the services he performs in so furnishing such certified copies. The statute above quoted which prescribes the rate of compensation that the official shall receive for the performance of the duties set forth by said statute would seem to be a reasonable measure of the fair value and worth of the compensation that such a clerk would be entitled to for furnishing certified copies of naturalization papers or marriage certificates.

CONCLUSION

It is our opinion that the section above quoted in the naturalization laws does not apply with reference to fixing or affecting the fees that may be charged by the circuit clerk in furnishing certified copies of naturalization papers, and further that the clerk in furnishing such certified copies of naturalization papers or in furnishing certified copies of marriage certificates is entitled to charge therefor at the rate of 10¢ per one hundred words thereof plus 50¢ for affixing his certificate thereto.

Very truly yours,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

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

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