

RECORDER OF DEEDS: A fee may not be charged by a Recorder of Deeds for recording a discharge of a soldier in military service.

September 21, 1944

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Miss Helen Masterson  
Recorder of Deeds  
Clay County  
Liberty, Missouri

Dear Miss Masterson:

This department acknowledges receipt of your letter of September 1, 1944, requesting an opinion of this office. Your letter is as follows:

"I will appreciate it very much if you will give me your opinion on some phases of the law regarding the recording of discharges of those in the armed forces.

"In as much as some of the recorders in this state are on a salary, and others operate on a fee basis, this law interpreted literally, would throw the expense of recording discharges on the county, in some counties, and on the recorder in others. I have been informed that in some of the states in which the recording official handles work on a fee basis, the laws relative to recording discharges, specify that the cost of recording shall be borne by the county in which the discharge is recorded. Since the law in our state does not so specify, will you kindly give me your opinion on the following questions: -

"1. Is it the purpose of this law that in some counties the fee for recording discharges shall be borne by the county, and in others by the recorder - or

"2. Would you interpret this law as meaning that the county should bear this expense in each county in the state?

"3. If the county court is willing to bear the expense of recording discharges in counties in which the recorder is on a fee basis, is it possible under the law, for them to do so?

"4. Would the legislature have the authority to force an individual to bear this expense?

"5. This law makes no limitation as to what discharges the recorder may be forced to record. In your opinion should the person discharged not be an actual resident of the county in which the discharge is recorded, or a resident of such county at the time of his entrance into the service?

"I heartily approve of the law in so far as it provides that this service shall be furnished veterans without charge, however, I feel that it shows great discrimination against recorders in certain counties. In addition to recording discharges free of charge, the veteran is entitled to as many certified copies of the record as he requires. No doubt in many counties where this expense must be borne by the recorder (if that is your interpretation of the law), with thousands of discharges to be recorded and certified copies to be furnished, the expense of deputy hire will exceed the fees received in the office. I am sure that in this county, and no doubt in many others, it will run into thousands of dollars.

"Since this law went into effect we have, of course, been recording discharges free of charge and it has made little difference as very few have been recorded; but I am wondering what the fate of the recorders will be in the near future when the boys are discharged in large numbers."

Section 15077A, Laws of Missouri, 1943, page 643, reads as follows:

"Any person who is the holder of a discharge from the Armed Forces of the United States may demand that said discharge be recorded by the recorder of deeds of any county in this State, including the recorder of deeds of the City of St. Louis, and it shall be the duty of said recorder of deeds to record said discharge without any fee or compensation therefor."

In view of the plain words of the above quoted section of the statute no interpretation of the statute is required, and our answer is in the negative to each of the first three questions contained in your inquiry.

Although the fourth question is not too clearly phrased, we might point out that the Legislature could, of course, repeal the above quoted section and could also repeal Section 15077, R. S. Mo. 1939, and could enact a statute providing for fees to be charged for recording soldiers' discharges, in which event the individual would be required to bear the expense. That, of course, is not the present state of the law and is merely a statement of what might be done by the Legislature. The above mentioned sections of the statute are in full force and effect and provide that the recorder shall record these discharges "without any fee or compensation therefor."

In answer to the fifth question, the exact words of Section 15077A, supra, provide for the recording by the recorder of deeds of a discharge of "any person who is the holder of a discharge from the Armed Forces of the United States." It is clear that this section applies to not only residents of the State or residents of any particular county but provides that this free service be rendered to any person who holds a discharge from the armed forces of the United States. In our opinion this statute is susceptible of but one interpretation and that is that any member of the armed forces of the United States may present a discharge to be recorded by the recorder of deeds of any county of this State and he shall

receive this service from the recorder of deeds absolutely free of charge.

In the absence of statutory provision providing for a fee for recording an instrument, a recorder may not charge a fee. Upholding this statement, is the case of Nodaway County v. Kidder, 129 S. W. (2d) 857, 860, wherein it is said:

"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 must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S. W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656.

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645."

In the event the recorder should attempt to collect the cost or a fee from a source other than from a soldier for recording the discharge, it would be necessary for the recorder to have specific statutory authority upon which to base the charge. We know of no such authority.

Miss Helen Masterson

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Sept. 21, 1944

The above and foregoing constitutes the opinion  
of this department.

Respectfully submitted,

RALPH C. LASHLY  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
Acting Attorney General

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