

RECORDER OF DEEDS: Recorder of deeds cannot charge for duplicate certified copies of marriage licenses issued to a member of the Armed Forces.

January 11, 1943

Honorable John C. Ryan
Recorder of Deeds
Pettis County
Sedalia, Missouri



Dear Sir:

We wish to acknowledge receipt of your letter of January 4, 1943, which contained the following request for an opinion:

"Will you please give me an opinion on furnishing certified copies of marriage licenses for boys who are inducted into the army so that they can receive pay for their wives.

"There is a Statute, I believe, which states that any official shall furnish a certified copy of any instrument, that is a matter of record, for a veteran free of charge. My pay is only fees and I would like to know if this Statute applies to soldiers who are being inducted at this time.

"We are having a lot of calls for certified copies which we are not sure that they are being used for allotment pay and on one or two occasions we have had them send in for an extra duplicate copy. We also wonder if we could charge for these."

Section 15077 R. S. Missouri, 1939, reads as follows:

"Whenever a certified copy or copies of any public record in the state of Missouri are required to perfect the claim of any soldier, sailor or marine, in service or honorably discharged, or any dependent of such soldier, sailor or marine, for a United States pension, or any other claim upon the government of the United States, they shall, upon request be furnished by the custodian of such records without any fee or compensation therefor."

In your request you state that the certified copies of marriage licenses for boys who are inducted into the Army are requested so that they can receive pay for their wives.

It is always a question of fact whether or not the certified records requested from your office are for the purpose set out in Section 15077, supra. If the request for the certified marriage license is for the purpose of receiving the allotment to be paid their wives, it would come within the following part of Section 15077, supra.

" * * * or any dependent of such soldier, sailor or marine, for a United States pension, or any other claim upon the government of the United States, * * * * * ."

This section does not, in any manner, refer to duplicate copies of the marriage license properly certified, and does not state that a fee should be charged for a second certified copy. We realize that in some cases a member of the Armed Forces may lose the certified copy of the marriage license, and may require another one, and, in view of the fact that no compensation is allowed for, " * * * a certified copy or copies of any public record in the State of Missouri * * * ", it is a matter to be taken care of by the legislature.

Where a public officer attempts to charge a fee on a statute where there is some ambiguity, the rule is that the statute is strictly construed against the officer. It was so held in *Smith v. Pettis County*, 136 S. W. (2d) 282, pars. 4-6, where the court said:

"The rule is established that the right of a public official to compensation must be founded on a statute. It is equally established that such a statute is strictly construed against the officer. *Nodaway County v. Kidder*, Mo. Sup., 129 S. W. 2d 857; *Ward v. Christian County*, 341 Mo. 1115, 111 S. W. 2d 182. * * * * *

The general rule is that where a statute does not provide a fee or compensation to be paid to an officer, for performing part of his duties, the performing of the duties should be deemed to be gratuitous. It was so held in the case of *Nodaway County v. Kidder*, 129 S. W. (2d) 857, Pars. 5-8, where the court 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. Euder 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."

Section 15078 R. S. Missouri, 1939, reads as follows:

"Any person or persons violating any provision of section 15077 shall be deemed guilty of a misdemeanor."

Under this section it is a misdemeanor for a recorder of deeds to violate section 15077, supra.

Honorable John C. Ryan

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CONCLUSION

It is, therefore, the opinion of this department that the recorder of deeds cannot charge a man inducted into the Army for certified copies of marriage licenses, or for duplicate certified copies of marriage licenses.

Respectfully submitted

W. J. BURKE
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APPROVED:

ROY MCKITTRICK
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