

RECORDER OF DEEDS:
DUTIES CONCERNING CANDIDATES' AFFIDAVITS
AND COUNTY COMMITTEE'S REPORT ON CONTRI-
BUTIONS AND EXPENDITURES:

Recorder of Deeds
only required to
file candidates'
affidavits and
political committee's
reports in his office,
for which no charge
may be made.

December 11, 1940

Mr. John P. Sherrod
Recorder of Deeds
Jackson County
Kansas City, Missouri



Dear Sir:

This is in reply to your request submitted to
Mr. William Goodman, Assistant Attorney-General of
Kansas City, Missouri, wherein you request an opinion
of the law with reference to the Jackson County Recorder
of Deeds on the following:

- "(1) Candidates affidavit of expend-
idures.
- "(2) Statements of County Committees
contributions and expenditures.

"Please cover the following information
applicable to each:-

- "(1) Shall we both file and record the
instrument? (by filing I mean to
number and index the instruments
only, and retain the instrument
in our office)

"(by recording I mean to index and copy
into our records by the entirety of the
written matter therein.

"(2) If we should only file the instrument, what should our charges be?

"(3) If we should file and record the instrument, what should our charges be?"

The office of recorder of deeds being a creature of the statutes, we must look to the statutes creating that office for the powers and duties. This rule is announced in *Lamar Township v. City of Lamar*, 261 Mo. 171, 1. c. 189:

"Officers are creatures of the law, whose duties are usually fully provided for by statute. In a way they are agents, but they are never general agents, in the sense that they are hampered by neither custom nor law and in the sense that they are absolutely free to follow their own volition. Persons dealing with them do so always with full knowledge of the limitations of their agency and of the laws which, prescribing their duties, hedge them about. They are trustees as to the public money which comes to their hands. * * * *"

On the question of the authority of an officer to make a charge for a service, we find that such officer must be able to cite the statute authorizing the making of such charge, and, if he is not able to do this, and the law imposes upon him a duty, then the rendition of such service by the officer would be deemed to be gratuitous. This rule is announced in *Nodaway County v. Kidder*, 129 S. W. (2d) 857, 1. c. 860:

"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 com-

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. Such statutes, too must be strictly construed as against the officer. (Citing cases.)

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. (Citing cases.)"

It will be noted that statutes authorizing payment of fees to an officer are strictly construed as against the officer. With the foregoing rules in mind, we refer to the statutes creating the office of recorder of deeds and authorizing him to make charges for certain services.

Section 11543, R. S. Mo. 1929, sets out the various instruments which shall be recorded by the recorder of deeds. This section reads as follows:

"It shall be the duty of recorders to record: First, all deeds, mortgages, conveyances, deeds of trust, bonds, covenants, defeasances, or other instruments of writing, of or concerning any lands and tenements, or goods and chattels, which shall be proved or acknowledged according to law, and authorized to be recorded in their offices; second, all papers and documents found in their respective offices, of and concerning lands and tenements, or goods and chattels, and which were received from the Spanish and French authorities at the change of government; third, all marriage contracts and certificates of marriage; fourth, all commissions

and official bonds required by law to be recorded in their offices; fifth, all written statements furnished to him for record, showing the sex and date of birth of any child or children, the name, business and residence of the father, and maiden name of the mother of such child or children."

Section 11545, R. S. Mo. 1929, provides for recording all instruments in writing conveying chattels or personal property which are required to be recorded.

Section 11546, R. S. Mo. 1929, requires the recorder to keep an abstract and index of deeds, showing the grantors and grantees, etc. The instruments referred to in this section are the instruments which the recorder is required to record.

Section 11549, R. S. Mo. 1929, provides for the indexing of such instruments.

Section 11551, R. S. Mo. 1929, requires the recorder to index officer's commissions.

Section 11552, R. S. Mo. 1929, provides for the recording of patents.

Under Article 3, Chapter 22, which contains Sections 3097 to 3102, provisions are made for the filing of chattel mortgages.

Under Section 3099, as amended Laws of Missouri, 1935, page 209, it will be seen that the recorder of deeds is allowed twenty cents for his services for filing and releasing chattel mortgage.

Section 11804, R. S. Mo. 1929, provides for the fees which the recorder may charge for recording and for services in connection with his office. These fees, however, are only chargeable in case the statute authorizes the recorder to make a charge therefor.

Referring to the sections of the statutes pertaining to the filing of candidate's affidavits and statements of

political committees, we find that Section 10482, R. S. Mo. 1929, requires the candidate to file a statement of his receipts and expenditures with the officer empowered by law to issue the certificate of election and a duplicate thereof with the recorder of deeds for the county in which the candidate resides.

Section 10495, R. S. Mo. 1929, requires every treasurer of the political committee to prepare and file in the office of the recorder of deeds of the county in which such treasurer resides a statement of the receipts and disbursements of such political committee.

Section 10496, R. S. Mo. 1929, requires the officer who is required by law to issue certificates of election or commissions to retain these statements for a period of four years. There is no provision in the law for the disposition of these statements which are filed with the recorder of deeds. However, we do not think that the fact that the lawmakers failed to provide for the disposition of these files would be controlling on the question as to whether or not the officer should record these instruments or should make a charge therefor in case no authority is granted by the statute to make such charge or to record such instruments. In our research on this question, we fail to find where the duty is imposed upon the recorder of deeds to record these statements, and, in absence of such a statute we do not think that the party presenting such instrument for filing would be required to have the instrument recorded and to pay therefor.

Following the rule announced in the Nodaway County case, supra, it seems that the lawmakers, since they have made no provision for compensation to the officer for filing these statements, have intended that this service by the officer shall be deemed to be gratuitous.

CONCLUSION.

Answering your questions in the order in which they were submitted:

In answering your first question it is the opinion of this department that the recorder of deeds is only

Mr. John P. Sherrod

(6)

December 11, 1940

authorized to file the candidate's affidavit of expenditures and the statement of the county committee's contributions and expenditures.

Answering your second question, in view of the fact that no provision has been made for the recorder to make a charge for the filing of these instruments, it is the opinion of this department that no charge should be made.

Since your third question is answered by the answer to questions one and two, we do not deem it necessary to further comment on that question.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

TWB:CP

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General