

BOARD OF HEALTH:) A fee of 50¢ must be charged for certified
SOLDIERS AND SAILORS:) copies of birth or death records, except
RECORDS:) soldiers and sailors, when certain facts
exist, are entitled to same free of charge.

1-26
January 8, 1937.



Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"Section 9060 R. S. No. 1929 fixes the fees that the State Board of Health shall charge for making certified copies of any birth or death certificate filed in their office.

"We are now making an audit of the Vital Statistics of the State Board of Health and find that they do not charge for any certified copies of birth or death certificates furnished all branches of the Veteran Administration, including Veterans' Bureau, Veterans of Foreign Wars, Disabled American Veterans, American Legion, individuals when certificates required are wanted to adjust claim with federal government, also certificates furnished the American Red Cross, War Department or for enlistment in the U. S. Army or Navy, in CCC camps or for claims of WPA employees and several others.

"We would like an opinion from your department as to whether the Board of Health has authority under the Statute to exempt any or all of certificates furnished the above parties or agencies."

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Your letter invites attention to the fact that the State Board of Health does not charge certain organizations and individuals fees for certified copies of birth or death certificates. Failure of your letter to apprise us of the Board's specific ruling concerning said matter, we contacted you and were informed that the State Board of Health did not make such a ruling but that the certified copies were furnished by virtue of a rule promulgated by the then State Commissioner of Health. We mention the above solely to correct the statement in your letter that the State Board of Health furnished said certified copies of birth or death certificates free of charge.

Article 2, Chapter 52, Revised Statutes of Missouri, 1929, and amendments, relate to "Registration of Births and Deaths." Section 9040 of said article and chapter provides in part as follows:

"It shall be the duty of the state board of health to have charge of the state system of registration of births and deaths; * * * *"

Section 9041 of said article and chapter provides in part as follows:

"The secretary* of the state board of health shall have supervision over the central bureau of vital statistics, * * *, and shall act as state registrar of vital statistics. * * * The state board of health shall provide for such clerical and other assistance as may be necessary * * * and may fix the compensation of persons thus employed within the amount appropriated therefor by the legislature. * *"

* (The word "secretary" as mentioned in this section, now should read "commissioner of health" due to Section 9024, Laws of Missouri, 1933, page 269.)

The Legislature for the Biennium 1935 and 1936 appropriated money out of the state treasury, chargeable to the state revenue fund for "vital statistics." Laws of Missouri, 1935, p. 96, Section 22. We thus start with

the premise that the Commissioner of Health has supervision of the Central Bureau of Vital Statistics, the support of which is borne from the state revenue. Salaries, stamps, stationery and operating expenses of the Vital Statistics Department are paid from state revenue and the support of said division is not dependent upon its earning enough fees to pay its way.

To answer your question it is necessary to refer to three sections found in the 1929 revision of the statutes and to Section 46 of Article IV of the Constitution of Missouri. These sections and the Constitution are:

Section 9060, R. S. Mo. 1929, reads in part as follows:

"The state registrar shall, upon request, furnish any applicant a certified copy of the record of any birth or death registered under provisions of this article, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant. * * * * * And the state registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the state treasurer."

Section 13884, R. S. Mo. 1929, 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."

Section 13885, R. S. Mo. 1929, reads as follows:

"Any person or persons violating any provision of section 13884 shall be deemed guilty of a misdemeanor."

Section 46, Article IV, of the Constitution of Missouri, reads as follows:

"The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever; Provided, That this shall not be so construed as to prevent the grant of aid in a case of public calamity."

It is to be noted that Section 9060, supra, makes it mandatory upon the state registrar, when requested, to furnish certified copies of the record of any birth or death. When the state registrar furnishes certificates he is entitled to a fee of fifty cents. As heretofore pointed out, the Division of Vital Statistics is supported by the state revenue. Consequently, the fees earned from furnishing certified copies go into the state treasury and are not used to pay for the support of the Division. Thus when a certified copy is issued by the state registrar it entails the use of stationery purchased by state funds, as well as the use of state labor. If persons applying for certified copies receive same free of charge it would amount to the giving or granting of something of value to individuals and would violate the provisions of Section 46, Article IV, of the Constitution. No doubt the Legislature had in mind the provisions of Section 46, Article IV, of the Constitution, when it provided in Section 9060, supra, that the state registrar should be entitled to a fee of fifty cents for every certified copy.

In State ex rel. Parker Distilling Company, 139 S. W. 1. c. 486, the Supreme Court on a "motion for rule" held an act of the Legislature was unconstitutional which act provided that the Clerk of the Supreme Court was to furnish to counsel for litigants a copy of the opinions rendered by the Supreme

Court free of charge. The court held said act violated Section 46, of Article IV. The court said (p. 487):

"The state pays the stenographers for their services out of public funds. The state buys and pays for the machines which are worn out in the service. The state buys and pays for the stamps used for the transmission of these copies required to be furnished to the litigants. Under these circumstances, to my mind it is clear that as to private litigants this law contemplates the appropriation of public funds for the benefit of individual litigants, and is therefore void."

It is gratuitous grants that are barred by the Constitution of the State of Missouri. *State ex inf. v. Southwestern Bell Telephone Company*, 92 S. W. (2d) 612, 613. *State ex rel. Kelly v. Hackmann*, 205 S. W. 161.

While Section 9060, supra, entitles the state registrar to a fee of fifty cents for each certified copy, and by virtue of the Constitution, Section 46, Article IV, the Legislature cannot make or authorize the making or giving of any gratuitous grant to individuals, yet, the Legislature did enact Sections 13884 and 13885, supra, and made it mandatory that certified copies be given free of charge to soldiers, sailors or marines, or to their dependents, when such records were necessary "for a United States pension, or any other claim upon the government of the United States."

The constitutionality of Section 13884, supra, in our opinion, is doubtful. However, we are not deciding that question. Suffice it to say that Section 13885 makes it a misdemeanor if any person charged with the duty of furnishing certified copies of records, fails to so furnish such free of charge. Further, "Every statute will be presumed to be constitutional till the contrary plainly appears, and it is only when it manifestly infringes some provision of the constitution that it can be declared void. *State v. Burgdoerfer*, 107 Mo. 1, and cases cited." *Deal v. Mississippi County*, 107 Mo. 464, l. c. 468. We, therefore, for the purpose of this opinion, assume that Section 13884 is constitutional.

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Section 13884, supra, requires the custodians of records to give without fee or compensation certified copies to "any soldier, sailor or marine in service or honorably discharged, or any dependent" when such records are required to perfect a claim "for a United States pension, or any other claim upon the government of the United States." In other words, Section 13884 only requires the gratuitous giving of records or certified copies when certain facts exist. We do not know whether or not the certified copies were given in order to claim a United States pension or to perfect a claim against the government. Consequently, in order to answer your request, it necessitates a finding of fact in each individual case.

No soldier, sailor or marine, or their dependants, are entitled to certified copies free of charge unless it be for the purpose of getting a pension or to establish or perfect a claim against the government of the United States. The mere fact that the Veteran Administration, Veterans of Foreign Wars, Disabled American Veterans, American Legion, CCC camps, WPA, American Red Cross, request certified copies, do not of themselves or the nature of their work entitle them to gratuitous birth or death certificates. If such organizations or persons desire copies of birth or death records in order to perfect the claim of any soldier, sailor or marine in service or honorably discharged, for a pension or other claim against the government, then, in our opinion, the copies must be furnished free of charge. You will understand that we cannot write an opinion approving the gratuitous giving of certified copies to the parties or agencies enumerated in your letter, because we do not have the facts in each individual case.

From the above it is our opinion that every person applying for a certified copy of a birth or death record, is entitled to receive same, of which there shall be a charge made, for the service rendered, in the amount of fifty cents per copy, with the exception that if it is necessary or required to perfect the claim of any soldier, sailor or marine in service or honorably discharged, or any of their dependants,

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for the purposes of obtaining a pension from the United States or to establish any other claim upon the government of the United States, certified copies shall be furnished free of charge.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

JLH:EG