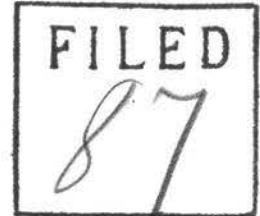


SOLDIERS: : Soldiers, sailors and marines in service or
STATE BOARD: : honorably discharged from service, or
OF HEALTH: : dependents of any soldier, sailor or
: : marine shall not be charged for certified
: : copies of public records in the care and
: : custody and control of the State Board
: : of Health, where such copy is to be
: : used to establish a claim with the
: : United States government.

January 11, 1944



Honorable E. B. Swift, Adjutant
Boone County Post No. 280
Veterans of Foreign Wars
811 West Ash Street
Columbia, Missouri

Dear Mr. Swift:

This office is in receipt of your letter of January 9, 1944, in which you desire an opinion on the question, whether soldiers should be charged for certified copies of birth certificates in order to prove dependency, or to establish claims with the United States government. Omitting caption and signature, the full text of your letter is as follows:

"It has just been brought the attention of Boone County Post No. 280, Veterans of Foreign Wars, that the Bureau of Vital Statistics at Jefferson City has been charging service men a fee for furnishing them with birth certificates and other information these men need in order to prove dependency, etc.

"Revised Statutes of 1939 under 15077 plainly reads that service men are to furnished any and all information they need in order to establish claims at no cost whatever.

"Does this law apply to the Bureau of Vital Statistics or can they levy a charge for information from their office?

"The Department of Missouri Veterans of Foreign Wars is holding a Council of Administration meeting in Jefferson City this week-end and I would

appreciate hearing from you this week so that I can make a report on this."

That portion of our statute allowing the State Board of Health a fee for certified copies of birth or death certificates, reads as follows:

See Section 9781, R. S. Missouri, 1939

"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. For any search of the files and records, when no certified copy is made, the State Registrar shall be entitled to a fee of fifty cents for each hour or fractional hour of time of search, to be paid by the applicant.* * * "

This section is a general law authorizing the Board of Health to charge certain fees for copies of public records under their supervision. There is, however, a subsequent section relating to soldiers and other members of our Armed Services with respect to being furnished certified copies of their records. The section which we now proceed to examine is an exception to the one previously quoted.

Section 15077 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 claims 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."

These two sections relate to the same subject matter and must be read together. The latter section has special application to an exception in the case of members of our Armed Forces. The leading case of *Eagleton v. Murphy*, 156 S. W. (2d), 683, Pars. 2 and 3 will apply in this instance. This portion of this decision reads as follows:

"* * * Under the established rules of statutory construction where there are two laws relating to the same subject they must be read together and the provisions of the one having a special application to a particular subject will be deemed to be a qualification of, or an exception to, the other act, general in its terms. *State ex inf. Barrett v. Imhoff*, 291 Mo. 603, 238 S. W. 122; *State ex rel. Buchanan County v. Fulks*, 296 Mo. 614, 247 S. W. 129. * * *"

In the case of *State v. Brown*, 68 S. W. (2d), 55, Pars. 4-8, l. c. 59, we find the court making this statement:

"* * * Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.' *Tevis et al. v. Foley*, 325 Mo. 1050, 1054, 30 S. W. (2d) 68, 69; *State ex rel. Buchanan County v. Fulks*, 296 Mo. 614, 626, 247 S. W. 129; *State ex inf. Barrett v. Imhoff*, 291 Mo. 603, 617, 238 S. W. 122. If there be any repugnancy between these two statutes, the general statute, section 4556, must yield to the special statute, section 5613."

In construing the act of the Legislature, now known as 15077, as it appeared in the Laws of Missouri, 1921, page 660, we may take into consideration the title of the act in construing the same. Authority to do this should be found in the following cases.

Artophone Corporation v. Coale, 153 S. W. (2d), 343.

Holder v. Elms Hotel Company, 92 S. W. (2d), 620 and

Thomas v. Buchanan County, 51 S. W. (2d), 95.

The title to the act under our scrutiny, is not ambiguous. The language is plain and simple and the construction we place on it, is this: the record to be furnished without cost to the applicant, if the record is to be used for proving a claim of any soldier, sailor or marine, or other person in the service, or honorably discharged, or where any dependent of such soldier, sailor or marine is seeking to establish a claim for pension or any other claim upon and with the government of the United States.

The rule is here established that the right of a public official to compensation must be founded upon the statute. This holding and this statement of the law will be found in *Smith v. Pettis County*, 136 S. W. (2d), 262, Pars. 4-6: In this case 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. * * *"

In the decision just quoted we have a situation from a leading case, that of *Nodaway County v. Kidder*, 129 S. W. (2d), 857 at Par.5-8. In this case here is what the court had to say:

"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."

From our further inquiry into this matter, we find that if a public officer insists on charging a fee for a public record, where the statute expressly provides the service to be without cost, a penalty section has been enacted by the legislature. We refer you to section 15078, R. S. Mo. 1939, which in part reads as follows:

Jan. 11, 1944

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

This provides a penalty for failing to furnish such record and makes it a misdemeanor for an officer who charges a fee for records pertaining to claims provided for and set out in section 15077, which we have previously set out in detail.

C O N C L U S I O N .

From the above and foregoing, it is therefore, the opinion of this office that the State Board of Health can not charge for the furnishing of certified copies of birth certificates, death certificates, or any other record in its custody and charge, where the record is requested by a soldier, sailor, marine or other person in the Armed Forces, to prove a claim upon the government of the United States, and further, the section applies to any person honorably discharged from the Armed Forces, and also this act applies to the application to the public official by any dependent of a soldier, sailor or marine whose application is made for the purpose of establishing a claim upon the United States.

Respectfully submitted

L. I. MORRIS
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General of Missouri

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