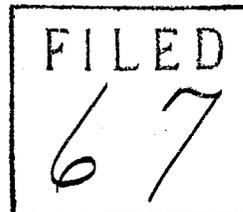


RECORDERS:

IN RE:

The appointment of additional help in the office of the Recorder of Deeds to record military service discharges.

November 20, 1945



21 Smith
Mr. Robert V. Niedner
Prosecuting Attorney
St. Charles County
St. Charles, Missouri

Dear Mr. Niedner:

This will acknowledge receipt of your letter of October 26, 1945, requesting an opinion of this office regarding the employment of a clerk in the office of the Recorder of Deeds to aid in the recording of military service discharges and in the preparation of certified copies of discharge certificates. Your letter of October 26, 1945, reads as follows:

"Will you please send me your opinion in answer to the following question:

"May the County Court appropriate funds from its General Revenue for the purpose of employing a Clerk in the Office of the Recorder of Deeds to record discharge certificates of persons in military service and to prepare certified copies of such certificates?"

Section 13160, R. S. Mo. 1939, reads as follows:

"In all counties wherein the offices of clerk of the circuit court and recorder of deeds have been or may be separated, the recorder of deeds may appoint in writing one or more deputies, to be approved by the county court of their respective counties, which appointment, with the like oath of office as their principals, to be taken by them and indorsed thereon, shall be filed in the office of the county clerk. Such deputy recorders shall possess the qualifications of clerks of courts of record, and may, in the name of their principals, perform the duties of

recorder of deeds, but all recorders of deeds and their sureties shall be responsible for the official conduct of their deputies. But no recorder now holding office shall appoint such deputy or deputies until he shall have entered into a new bond to the state in such sum, manner and form as is now required by law. R. S. 1929, Sec. 11542."

The above quoted section provides for the appointment of deputy recorders. While your letter uses the word "Clerk" in referring to the additional help in the Office of the Recorder of Deeds, we assume that you had in mind the same meaning as is referred to in the statute, the only difference being that you used the word "Clerk" while the statute uses the word "deputy". This must of course, follow because there is no statutory provision for the employment of extra help in the office of Recorder of Deeds which refers to such help as a "Clerk". The only provision for extra help is in the above section authorizing deputies.

We think the question upon which the matter before us turns is whether or not the Recorder of Deeds of St. Charles County falls within the provisions of Section 13160, supra.

Section 13147, R. S. Mo. 1939, provides as follows:

"There shall be an office of recorder in each county in the state containing 19,000 inhabitants or more, to be styled 'The office of the Recorder of Deeds.' R. S. 1929, Sec. 11526. Reenacted Laws 1933, p. 360, As amended, Laws 1941, p. 524, Sec. 1."

Section 13149, R. S. Mo. 1939, provides as follows:

"The clerks of the circuit courts shall be ex officio recorders in their respective counties, except in counties containing 19,000 inhabitants or more. R. S. 1929, Sec. 11528. Reenacted, Laws 1933, p. 360. As amended, Laws 1941, p. 524, Sec. 1."

The above sections have been construed by the Missouri Supreme Court in State ex inf. Crain v. Moore, 99 S. W.(2d) 17, 339 Mo. 492, The court, at l.c. 497 and 504, said:

"* * *For more than 100 years our statutes

provided generally that circuit clerks should be ex officio recorders. (R. S. 1825, p. 655; Sec. 11528, R. S. 1929.) And from 1865 on there was a further provision that in every county having a population of ten thousand inhabitants, it should be lawful for the county court to make an order separating the two offices. (G. S. 1865, sec. 23, p. 161; Sec. 11533, R. S. 1929.) The Act of 1933 struck out this Section 11533, and reenacted Sections 11526 and 11528 making the circuit clerk ex officio recorder in counties containing less than 20,000 inhabitants and separating the two offices in counties of greater population.* * *

* * * * *

"* * *Section 11526 thereof provides there shall be a separate office of recorder of deeds in each county in the State 'containing 20,000 inhabitants or more.' Section 11528 says the clerks of circuit courts shall be ex officio recorders in their respective counties 'except in counties containing 20,000 inhabitants or more.' The two sections obviously refer to counties which from time to time contain the specified populations.* * *"

The holding in this case, that the offices of Clerk of the Circuit Court and Recorder of Deeds in Counties containing a population of more than 19,000 inhabitants (the figures 19,000 were substituted for the figures 20,000 by an amendment, Laws 1941, page 524, Sec. 1) are separate offices, was reaffirmed in State ex inf. Lamkin ex rel. Harrison v. Tennyson, 151 S. W. (2d) 1090, 347 Mo. 1024. By the population census of 1940, the County of St. Charles contained 25, 562 inhabitants. Therefore, under sections 13147 and 13149, supra, the office of Recorder of Deeds in St. Charles County was made a separate office by the Act of 1933, which contained the sections just referred to.

Section 13158, R. S. Mo. 1939, provides, in part, as follows:

"In any county now or hereafter having a population of 20,000 and less than two hundred thousand inhabitants, the question

of combining the offices of circuit clerk and recorder may be submitted or resubmitted, to the qualified voters at the general election to be held in the year 1936, or any four or multiple of four years thereafter.* * *

Unless the people of St. Charles County have voted to combine the offices of Circuit Clerk and Recorder of Deeds, under Section 13158, supra, they remain separate offices. In your letter of November 14, 1945, you informed us that the office of Recorder of Deeds of said county constituted a separate office. It is patent, therefore, that no action has been taken to combine the offices of Circuit Clerk and Recorder of Deeds under Section 13158, supra, and, thus, they remain separate offices, under Sections 13147 and 13149, supra.

The determination left to be made is whether Section 13160, supra, applies to counties where the office of Recorder of Deeds is now a separate office. In order to do this we must ascertain whether the words "have been or may be separated," contained in Section 13160, supra, refer and apply to counties which now have a separate office of Recorder of Deeds.

What is now Section 13147, supra, was originally enacted in 1804, and, prior to 1933, read as follows:

"* * * There shall be an office of recorder in each county in the state, to be styled 'The office of the recorder of deeds'."

What is now Section 13158, R. S. Mo. was originally enacted in 1879, and, prior to 1933, read as follows:

"* * * In all counties wherein the assessed valuation of all property shall exceed fifteen millions of dollars and in which the offices of county clerk and recorder of deeds are joined, it shall be the duty of the county court, within thirty days after this chapter takes effect, to make an order separating said offices."

What is now Section 13160, supra, was originally enacted in 1883. It has remained as enacted up to the present time. However, the original section in 1883 contained an additional paragraph, which followed the words of the present section 13160, supra. This paragraph read as follows:

"Section 2. There being no provision in the statutes whereby recorders of deeds can appoint deputies in counties wherein said office is separate from clerk of the circuit court, creates an emergency within the meaning of the constitution; therefore, this act shall take effect and be in force from and after its passage."

It will be noticed from the historical facts, just set out, that what is now Section 13160, supra, was, at the time of its passage intended to apply to counties where the two offices were separate. By former enactments the County Court had been given the right to separate the two offices where a county contained a certain population. In these counties this had undoubtedly been done. Under the provisions of what is now Section 13158, supra, the separation of the offices was made on the basis of population and, as the population was steadily growing the Legislature knew that other counties would fall under the provisions of Section 13160, supra, and the two offices would be separated. It is thus clear why the Legislature used the words "have been or may be separated." Their intent was to take care of the situation which would arise when the two offices became separate offices in any county. They could not, however, have meant to exclude from the provisions of what is now Section 13160, supra, the counties in which the office of Recorder of Deeds was then separate, since such separation had already been accomplished by former acts. If any further authority on this proposition is needed, we have it expressly provided in the second paragraph of the Act passed in 1883. This paragraph shows clearly that the Legislature intended the section to apply in counties where the office of Recorder of Deeds was a separate office, since it stated that the Act was to go into effect as an emergency measure because there was, at that time, no provision for deputy recorders in counties where the office was a separate office.

It must be assumed that the Legislature knew the meaning and application of Section 13160, supra, when they reenacted it in 1933. Knowing that it applied to counties where the two offices were separate there was no need of changing its wording. We think the historical origin and background of Section 13160, supra, indicates clearly the interpretation which should be placed upon Section 13160, supra.

However, that it applies to counties where the office of Recorder of Deeds is separate, is, we think also apparent from an examination of other sections of the same Act of 1933. Statutes in pari materia must be construed together and the intent of the Legislature in passing a section must be determined by a consideration

of other sections on the same subject. Hull v. Baumann, 131 S. W. (2d) 721, 345 Mo. 159; State ex rel. Karbe v. Bader, 78 S. W. (2d) 835, 336 Mo. 259; State ex rel. Buchanan County v. Fulks, 247 S. W. 129, 296 Mo. 614. Sections 13154, 13155 and 13159 R. S. Mo., all passed along with Section 13160, supra, in 1933, refer to situations occurring when the offices of Circuit Clerk and Recorder of Deeds are separate offices.

Section 13154, R. S. Mo. 1939, reads as follows:

"That in the event any person has been elected or may hereafter be elected to the office of recorder of deeds in a county in which the office is a separate office at the time of such election, such office shall remain a separate office for the entire term for which such person has been or may be elected. R. S. 1929, Section 11534. Reenacted, Laws 1933, p. 360."

Section 13155, R. S. Mo. 1939, reads as follows:

"On the first Tuesday after the first Monday in November, 1934, and every four years thereafter, an election shall be held for said office of recorder, in each county of the state where the office of clerk of the circuit court and recorder of deeds are separate and the person so chosen at said election shall, on the first day of January next following, enter upon the duties of his office, first giving bond in the sum of not less than one thousand dollars (\$1000) or more than five thousand dollars (\$5000), at the discretion of the county court, conditioned for the faithful performance of the duties of his office, with at least two sufficient sureties, to be approved by the county court. R. S. 1929, Sec. 11535. Re-enacted Laws 1933, p. 360."

Section 13159, R. S. Mo. 1939, reads as follows:

"At the general election to be held in the State of Missouri in 1934 and every four years thereafter, in all counties where the office of Circuit Clerk and Recorder are separate, a recorder of deeds shall be elected

R.S. 1929, Sec. 11541. Reenacted, Laws 1933.
p. 360."

We think it clear that the Legislature had in mind the situation existing where the two offices were separate offices when they passed the Act of 1933. A large portion of the Act deals with the conditions where the office of Recorder of Deeds and Circuit Clerk are separate. In other words, they passed sections which apply expressly to where the offices were separate, but did not feel that there was any need for a change in the wording of Section 13160, supra, since it had formerly applied where the office of Recorder of Deeds was a separate office.

Section 13187, R.S. Mo. 1939, reads as follows:

"The recorder of each county in which the offices of recorder of deeds and clerk of the circuit court are separate shall keep a full, true and faithful account of all fees of every kind received, and make a report thereof every year to the county court; and all the fees received by him, over and above the sum of four thousand dollars, for each year of his official term, after paying out of such fees and emoluments such amounts for deputies and assistants in his office as the county court may deem necessary, shall be paid into the county treasury, to form a part of the jury fund of the county."

In State ex rel. Vernon County vs. King (1896), 136 Mo. 309, the Supreme Court of Missouri passed upon the question of whether a Recorder of Deeds was required to remit certain fees which he had collected over and above the four thousand dollars which he was entitled to keep as his compensation. The Recorder contended that he had paid the excess amount out for deputy hire. The question was whether or not the County Court could refuse to allow this amount for deputy hire. The Court held that the Recorder was not required to pay any money into the County treasury, and affirmed the lower Court which had so held. The Court cited Section 7450, R.S. Mo. 1899, which was the same as our present Section 13187, and in holding that this section allowed the Recorder a reasonable amount for deputy hire at l.c. 318, 319, 320 and 321, said:

"Under these provisions, is a recorder entitled, as a matter of right, to retain out of the fees of his office an amount sufficient to pay reasonable compensation to necessary assistants, or is the allowance left entirely to the discretion of the county court?

* * * * *

"In construing a statute which provided that when a county officer receiving a salary is compelled, by pressure of business to employ a deputy, 'the county court may make a reasonable allowance to the deputy,' the court held that the county must pay a reasonable compensation for the necessary service rendered, and that payment was not discretionary with the county court. Bradley v. Jefferson Co., 4 G. Greene, 300. See, also, Washington Co. v. Jones, 45 Iowa, 261.

"We are of the opinion, therefore, that the allowance to the recorder of reasonable compensation for necessary hire of assistants was not a matter of mere discretion with the county court. In his settlement, the recorder was entitled to a credit for the amount so paid; and, if such credit had been given, there would be, at most, but a small amount, if anything, due the county."

* * * * *

"But assuming that the settlement was fairly made, and that the payment of \$4,000 was on account thereof, and that a balance of \$1,519 remained unpaid, yet the amount was subject to the credit of whatever necessary sum was actually paid for the hire of clerks and other assistants. The agreement in respect to the allowance of such credit should be given as broad a meaning as that given to the statute; that is, that

