

RECORDER OF DEEDS: Has no authority to keep out of office justice of peace soliciting performance of marriage ceremony, whose conduct annoys applicants for marriage license and is detrimental to efficient operation of said office, but county court has right to eject intruders from said office.

October 19, 1939

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10-20



Dear Sir:

We received your request for our opinion dated September 7, 1939, in the following terms:

"Please give me a ruling on the following situation:

We have a justice of the peace in this county who persists in loafing in the Recorder of Deed's office and when couples come to this office to secure their marriage licenses he will either follow them in this office and insist on marrying them. This conduct is annoying to the applicants for the license and to the Recorder of Deeds. Does the Recorder of Deeds have the authority to forbid and keep this justice of the peace from coming into his office?"

In your letter dated October 16, 1939, you referred to the conduct of the justice of the peace as "detrimental to the efficient operation of his office".

The framers of the Constitution and the legislature, having given to the county court the right to expel or eject intruders or trespassers from the county courthouse or offices therein (as will be seen below), it is to be presumed it was not intended to be exercised by the Recorder of Deeds.

Article VI, Section 36, Constitution of Missouri, provides:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

Section 2078, R. S. Mo. 1929, Mo. St. Ann., page 2658 provides, in part:

"The county court shall have control and management of the property, real and personal, belonging to the county * * * ."

The control and management of county property was held in Sparks vs. Purdy, 11 Mo. 219, necessarily to include the right summarily to expel or eject intruders or trespassers from the county courthouse and offices therein and the court, in part, said, at side pages 224 and 225:

"The law intrusts the County Court with the control and management of the property, real and personal of the county; and under this power the court superintends the public buildings. Public convenience requires that a summary power to prevent the illegal occupation of, and to eject trespassers from the places designed for the transaction of the business of the county should exist in some body."
(Underscoring ours)

* * * * *

"That a County Court may expel an intruder from the court-house in a summary way, we have no doubt, but under the circumstances of this case, their conduct toward

Sparks was harsh and illegal."

Where the sheriff, by authority of the county court, forcibly ejected from a county office a former county officer, it was held that neither the judges of the county court, nor the sheriff were liable in damages and the court, in part, said:

"The county court was entitled to the free and unconditional access to and use of its records and it was entitled to treat any one as a trespasser who, without official authority, obstructed its access to or use of the same. (Sparks v. Purdy, 11 Mo. 219.)"

Morgan vs. Owen, et al 193 Mo. 587, l.c. 596, 91 S. W. 1055.

The question what conduct makes one an intruder or trespasser in a county office seems to have arisen most frequently in connection with the conduct of persons coming into and using the office of the Recorder of Deeds for the purpose of copying records for abstractors. In stating the rule that abstractors, as a part of the general public, have a right to come into and use the office of the recorder, it is said that right is subject to the following conditions, in 1 R.C.L. 98 (and cases cited):

"Even when the statutes confer this extensive right on abstractors, they must exercise it reasonably, with due regard to the rights and duties of the custodian of the records and to the right of others having similar privileges of access; and the right may be exercised only on compliance with such reasonable regulations as the law and the custodian of the records may prescribe, such as a limitation on the number of employees that an abstractor may put at work on

the records at one time, decent and orderly behavior of such employees, etc."

Regarding a similar situation, the Supreme Court of Tennessee, in *Shelby County vs. Memphis Abstract Company* 203 S. W. 339, L.R.A. 1918 E, 939, l.c. 941, 942, said:

"By Sec. 505 of Thompson's Shannan's Code the sheriff of the county is given charge of the courthouse, unless some other person is specially appointed by the court for the purpose, and he is given power to prevent trespassing and to exclude intruders. The county register is custodian of the records in his office, and in event the employees of defendant company should prove to be intruders by refusing to obey reasonable rules or demands of the register, or should unduly interfere with other members of the public in their use of the registry, the sheriff would have authority to exclude them."

The right which the sheriff was there said to have was based on his having charge of the courthouse. That right is possessed in Missouri by the county court, because it has charge (control and management) of the courthouse.

The limitation upon the right of an abstractor, as a part of the public, to use the office of the recorder of deeds, was announced in the following terms in Day vs. Button 96 Mich. 600, 56 N. W. 3:

"This right does not permit the register to be unduly annoyed by a large force, or by work at unseasonable hours, or by the monopoly of furniture, office room, or records to the exclusion of other persons, or interfere with his right to prescribe

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a reasonable use of the same."

Upon all the above authority, if the conduct of the justice of the peace is such as to impair the efficiency of the office of the recorder of deeds (as you indicate it is in your letter dated October 16, 1939), or such as to interfere unduly with the use of said office by the public, the county court has the right, by its order through the sheriff, to expel or eject said justice of the peace as an intruder or trespasser. The framers of the Constitution and the legislature, having given that right to the county court, it is to be presumed it was not intended to be exercised by the recorder of deeds. Where the statute directs the performance of certain things by a particular person or body, it implies that it shall not be done by a different person. 59 C. J. page 984 and cases cited.

The reference in some of the cases cited to the prescribing of rules and regulations by the recorder is applicable only to the records themselves.

CONCLUSION

The recorder of deeds has no authority to keep out of his office a justice of the peace soliciting performance of a marriage ceremony, whose conduct annoys applicants for a marriage license, and is detrimental to the efficient operation of said office, but the county court has the right to eject intruders from said office.

Respectfully submitted,

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APPROVED:

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EH:RT