

RECORDER OF DEEDS: Under the statutes no fee is allowed a recorder of deeds for the filing of a "Notice of Lien" under Unemployment Compensation Act.

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September 22, 1939

9-27



Hon. Oliver Senti  
Associate City Counselor  
Law Department  
St. Louis, Missouri

Dear Sir:

We are in receipt of your request for an opinion dated September 21, 1939, which reads as follows:

"Thanks for your opinion of September 5th in reference to the filing for record of the 'Notice of Lien' under the Unemployment Compensation Law, together with a copy of your opinion to the Prosecuting Attorney of Newton County, both of which have been forwarded to the Recorder of Deeds for his guidance, and he has had an index made, ruled so as to show the matters set out in your opinion.

"The Statute is silent as to the Recorder's fee and he will like your opinion as to what fee he can lawfully demand for filing these notices; also what his procedure shall be when a release executed by the Commission is filed for record, as provided by Section 15 of the Act.

"I have suggested that until you rule on the questions submitted, he make the same charge that is now made for filing chattel mortgages, and when a release is presented, to cancel the notice by perforation and retain in his file both the release and the cancelled notice, and have the Deputy Record-

er by whom the notice was cancelled note the cancellation on the margin of the record and the date thereof.

"Will you kindly rule on these two questions so that the Recorder of the City of St. Louis may be governed accordingly, and oblige."

Paragraph (g) of Section 15, Laws of 1939, page 925, reads as follows:

"If any case in which any contribution, interest or penalty imposed under this Act is not paid when due, the Commission may file for record in the Recorder's Office of the county in which the employer owing said contribution, interest or penalty resides, or has his place of business or any other county in which he has property, a notice of lien specifying the amount of the contribution, interest or penalty due and the name of the employer liable for the same. From the time of filing any such notice, the amount of the contribution specified in such notice shall have the force and effect of a lien of a judgment against the employer named in said notice of lien for the amount specified in such notice. Such lien may be released by filing for record in the office of the county recorder a release thereof executed by the Commission upon payment of the contribution, interest and penalties or upon receipt by the Commission of security sufficient to secure payment thereof, or by final judgment holding such lien to have been erroneously imposed."

It will be noticed under the above section that the legislature did not see fit to allow any fee to the recorder of deeds for the filing of a "Lien of Judgment." This office has ruled that the filing of a "Notice of Lien" means the leaving of the "Notice of Lien" in the office of the recorder of deeds in the same manner as a chattel mortgage is filed for record. We have also ruled that the "Notice of Lien" need not be recorded, but only filed.

We have checked all of the fees that are allowed by statute to the recorder of deeds and find no allowance of fees to the recorder of deeds for the filing of "Notices of Lien." We have checked Section 3099 as set out in Laws of Missouri, 1935, page 209, which applies to the filing of chattel mortgages. We have also checked Section 11804 R. S. Missouri, 1929. The only allowance of fee for the filing of instruments is in Section 11804, supra, which reads as follows:

"For recording every deed of instrument, for every hundred words.....\$.10  
In addition to the above fee for recording deeds, they shall be allowed for recording every such instrument, relating to real estate, a fee of ten cents, as a compensation for making and preserving direct and inverted indexes to every book containing deeds affecting real estate."

We do not believe the above is applicable for the allowance of a fee for the filing and indexing of a "Notice of Lien" under the unemployment act, for the reason that it only applies to real estate and to instruments recorded and not filed for record.

In order that a public officer should be allowed fees it must be specifically set out by the statutes and all fee statutes should be strictly construed.

In the case of Gammon v. Lafayette County, 76 Mo. 675, l.c. 676, the court said:

"The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the statute gives it. When the statute fails to provide a fee for service he is required to perform as a public officer, he has no claim upon the State for compensation for such service."

Under the above case it is held that when a statute fails to provide a fee for service still the officer must perform his

duties as it is part of the requirements of his office.

Also, in the case of *State ex rel v. Patterson et al.*, 152 Mo. App. 264, l. c. 268, the court said:

" \* \* The rule is well settled that a public officer cannot demand any compensation for his services not specifically allowed by statute, and that statutes providing such compensation must be strictly construed. (*Shed v. Railway*, 67 Mo. 687; *Gammon v. LaFayette Co.*, 76 Mo. 675; *State v. Wofford*, 116 Mo. 220; *State ex rel. v. Walbridge*, 153 Mo. 194; *Sanderson v. Pike Co.*, 195 Mo. 598.

"At common law the rule was that 'where the law imposes a duty upon an officer, he cannot claim a remuneration for fulfilling it unless the law has expressly conferred such right.' (*Crofut v. Brandt*, 58 N. Y. 106.) The most recent recognition in this state of this rule thus is expressed in *Sanderson v. Pike County*, supra: 'It is well-settled law in this state that the right to compensation for the discharge of official duties is purely a creature of the statute, and that the statute which is claimed to confer that right must be strictly construed. The right of a public officer to compensation is derived from the statute and he is entitled to none, for services he may perform as such officer unless the statute gives it. . . . Such compensation is not the creature of contract nor dependent upon the fact, or value of services actually rendered, and cannot be recovered upon quantum meruit.'"

Also in the case of *Williams v. Chariton County*, 85 Mo. 645, l. c. 646, the court said:

"Under the authority of the case of *Shed v. Ry. Co.*, 67 Mo. 687, no fees are allowed an officer except where expressly given and allowed by law. Moreover the compensation of assessors, except in St. Louis county, is fixed at a certain sum, and this sum includes all personal property

assessed to one owner. Dogs being assessed in the list of personal property makes no increase in the emoluments of the assessor. See section 69, W. S. 1872, p. 1172. Therefore, judgment affirmed."

Also, in the case of Scott v. Endicott, 38 S. W. (2d) 67, 1. c. 68, the court said:

"There can be no doubt that a deputy sheriff appointed by the sheriff, as provided by section 11513, R.S. Mo. 1929, is a public officer. State ex rel. Walker v. Bus, 135 Mo. 325, 36 S. W. 636, 33 L. R. A. 616. That being true, he is subject to the same general limitations as any other public officer in the matter of salary and fees. There is no provision in the law providing a salary for deputy sheriffs in counties such as Ozark county. \* \* \*"

#### CONCLUSION.

In view of the above authorities it is the opinion of this department that the recorder of deeds of any county is not entitled to a fee for the filing of a "Notice of Lien" under the present Unemployment Compensation Law, which is paragraph (g) of Section 15.

Paragraph (g), supra, is as silent on the method of handling a release, as it is on the allowance of a fee to the recorder's office. It only states that the lien may be released by filing a release from the Commission upon the payment of the contribution, or by the Commission receiving security sufficient to secure the payment of the contribution, or by a final judgment holding such lien to have been erroneously imposed. All that we can say in the matter is, that the statute is strictly followed either by the filing of a release by the Commission upon the defendant or employer complying with the order of the Commission, or by the filing of a certified copy of a final judgment by a court of competent jurisdiction. In view of paragraph (g) not specifically setting out the procedure, the recorder of deeds should re-

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tain the "Notice of Lien" and the cancellation notice, to be held as other papers filed in the office of the recorder of deeds.

When a chattel mortgage is released, the index is stamped "paid" and the owner of the chattel mortgage receives the original chattel mortgage, or a true copy of the chattel mortgage. Nothing is filed in the release of a chattel mortgage. When a "Notice of Lien" is released another paper is also filed which would be either a release by the Commission by payment of the employer or by the filing of a certified copy of a final judgment by a court of competent jurisdiction. In view of the leaving of the release with the recorder of deeds, it would be impossible for the recorder of deeds to return the "Notice of Lien" to the Unemployment Compensation Commission.

I would suggest that when a "Notice of Lien" is lawfully released, the "Notice of Lien" itself should be stamped "released" and at the same time the word "released" should be placed opposite the serial number on the index book, which is described in the opinion rendered to Herbert H. Douglas, Prosecuting Attorney of Newton County, Missouri, dated August 28th, 1939, a copy of which was furnished you.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

WJB:RW