

SOLDIERS:  
STATE BOARD OF HEALTH:

Soldiers should not be charged for certified copies under certain conditions.

February 12, 1943

Mr. Elmer A. Heideman  
Department Judge Advocate  
Wainwright Building  
St. Louis, Missouri



Dear Sir:

Your request for an opinion has been received by this office.

Your inquiry is whether or not the State Board of Health should require a fee for the certified copy, or copies of birth or death certificates which 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.

Section 9781 R. S. Missouri, 1939, partially reads 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. 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 allowing the State Board of Health a fee for certified copies of a birth or death certificate.

Section 15077 R. S. Missouri, 1939, 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."

This is a special statute and is only applicable to a soldier, sailor or marine, or a dependent of such soldier, sailor or marine, where the certified copy is required, in order that either of them may obtain a United States pension, or be used as evidence in any other claim upon the Government of the United States.

The two sections above set out relate to the same general subject matter, but Section 15077, supra, specifically applies to soldiers, sailors, marines and their dependents. These two statutes relating to the same subject matter must be read together, and provisions of one having special application to a particular subject will be deemed a qualification or "exception" to the statute general in its terms, such as the general statute allowing the State Board of Health to charge a fee of fifty cents for all birth and death certificates. It was so held in the case of *Eagleton v. Murphy*, 156

S. W. (2d) 683, Pars. 2-3, where the court said:

" \* \* \* 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. \* \* \* \* \*"

Section 9781 R. S. Missouri, 1939, is a re-enactment of Section 9060 R. S. Missouri, 1929, which appears in the Laws of Missouri, 1937, page 356. The re-enactment did not repeal Section 15077, supra, which first appears in the Laws of Missouri, 1921, page 660. The re-enactment of Section 9060 R. S. Missouri, 1929, merely changed the section to allow a charge of an additional fifty cents for each hour, or fractional hour spent in research on behalf of the applicant. It further added that no fee should be charged where the certified copy was required to perfect the claim of persons on relief for any claim upon the Government of the United States. In other words, Section 15077, supra, which specifically applies to the soldiers, sailors and marines was a later statute than what is now Section 9781 R. S. Missouri, 1939.

Where a general statute was enacted subsequent to an earlier special statute relating to the same subject matter, the special statute will be construed as an exception to the general statute, unless expressly or impliedly repealed. It was so held in the case of State v. Brown, 68 S. W. (2d) 55, Pars. 4-8, l. c. 59,

where the court said:

" \* \* \* 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."

The title to the bill which is now Section 15077, appears in Laws of Missouri, 1921, page 660, and reads as follows:

"SOLDIERS, SAILORS OR MARINES:  
Providing that Certified Copies of  
Public Records be Furnished Free of  
Charge.

"AN ACT providing that certified  
copies of public records be fur-  
nished free of charge to any sol-  
dier, sailor or marine in service  
or honorably discharged, or any  
dependent of such soldier, sailor  
or marine."

The title to an Act of the legislature may be looked to in construing the Act. It was so held in *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.

Under the title to the Act which is now Section 15077 R. S. Missouri, 1939, there is no ambiguity as to the furnishing free, of certain public records. Of course, it is always a question of fact as to whether or not the records demanded come within the description of the records and their use, as set out in Section 15077, supra. It must be for the purpose of perfecting the claim of any soldier, sailor or marine in service, or honorably discharged, or a claim of any dependent of such soldier, sailor or marine for a United States pension, or any other claim upon the Government of the United States.

We do not hold that there is any ambiguity between the two sections, 9781, supra, and 15077, supra, but where a public officer attempts to charge a fee on a statute where there is some ambiguity, the rule is that the statute is strictly construed against the officer. It was so held in *Smith v. Pettis County*, 136 S. W. (2d) 282, Pars. 4-6, where 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. \* \* \* \* \*

The general rule is that where a statute does not provide a fee or compensation to be paid to an officer, for performing part of his duties, the performing of the

duties should be deemed to be gratuitous. It was so held in the case of *Nodaway County v. Kidder*, 129 S. W. (2d) 857, Pars. 5-8, where the court said:

"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. Euder 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."

Section 15078 R. S. Missouri, 1939, reads as follows:

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

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Under this section it is a misdemeanor for a public officer who has charge of the records pertaining to claims, as set out in Section 15077, supra, to charge for certified copies.

CONCLUSION

It is, therefore, the opinion of this department that the State Board of Health cannot charge for furnishing a certified copy of a birth certificate, death certificate or any other copy in its charge, where the same is 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.

Respectfully submitted

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APPROVED:

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