

PROBATE JUDGE: * Fees received by Probate Judges for issuing order to Recorder to waive three (3) day waiting period between application and issuance of Marriage license, is an accountable fee. Probate Judge shall at the end of each month make and file with County Clerk, a report (a) of all fees collected for the month, (b) fees earned but not collected for month, except (1) fees collected for solemnization of marriages; (2) hearing and determining inheritance tax matters.

November 16, 1943

Honorable M. V. Lane,
Judge of the Probate Court
Putnam County
Unionville, Missouri

11/29
FILED
51

Dear Mr. Lane: .

This office is in receipt of your letter, written to Honorable Forrest Smith, under date of November 10th, 1943. Omitting caption and signature, such letter reads as follows:

"Along these Northern tier of counties we Probate Judges will undoubtedly be called upon to issue an Instanter for a Marriage License.

"What I would like to know if this fee is an accountable or non accountable fee, I realize that the fee for solemnizing a marriage is non accountable, but this I was in doubt of.

"What do you think the fee should ___ for issuing the instanter.

"Please let me know about this at an early date."

To answer your inquiry we turn to the provisions of Senate Bill No. 4, which on and after November 22, 1943, will become operative as Section 13404A, R. S. Mo. 1939.

This portion of our statutes concerns itself with the compensation to be allowed Probate Judges in counties which have or may hereafter have a population of less than 19,000 inhabitants. This section provides for the disposition of such fees and salaries.

After providing for the monthly installment payment of an annual salary, to be paid by warrant drawn by the County Court. The minimum salaries range from \$750.00 in counties having 10,600 inhabitants or less, to \$2,400.00 in counties having a population of less than 19,000. That portion of the statute useful for our purposes reads as follows:

"It is further provided that all Probate Judges in such counties shall at the end of each and every month after this act shall take effect, make and file with the County Clerk a report of all fees actually collected by him or his clerk during the month, except fees earned and collected for the solemnization of marriages and the hearing and determining of inheritance tax matters, together with a report of all such fees earned during the month but not yet collected, and that he shall at the end of each month pay over to the County Treasurer all monies collected by him or his clerk during the month which are required to be shown in the monthly report as above provided, * * *"

For the order which would issue whereby the three day period between making of the application and issuance of a license "instanter" the Probate or Circuit Judge would be entitled to a fee for making such order. (See Sec. 13,404, R. S. Mo. 1939.

Looking now to the Statutes which govern the issuance of Marriage licenses, we find that the provisions of House Bill No. 20, as passed by the Sixty-second General Assembly, which, when it becomes operative on November 22, 1943, as new Sec. 3364, R. S. Mo. 1939, requires an application for a marriage license three (3) days before a Recorder shall be authorized to issue a license. The only exception to the above procedure being as follows:

"Provided, however, that said license may be issued on order of the Circuit or Probate Court or a judge thereof in vacation, of the county in which said license is applied for, without waiting

Nov. 16, 1943

three (3) days as herein provided, such license being issued only for good cause shown and by reason of such unusual conditions as to make such marriage advisable."

The language of the statute is clear, unambiguous and leaves no doubt as to the intent of the Legislature. We deem it unnecessary to do more than point out the obvious intent of the Legislature.

C O N C L U S I O N .

From what has gone before, we therefore conclude: That the Probate Judge, shall at the end of each month, make and file with the County Clerk, a report of all fees as follows:

- EXCEPT
1. Fees actually earned and collected by him.
 2. Fees actually earned and not collected,
 - A. Fees earned and collected for the solemnization of marriages
 - B. And the hearing and determination of inheritance tax.

That an order of the Court authorizing the Recorder of Deeds to issue a marriage license on the same date application is filed is not within the exceptions mentioned above. Because it is not within the exceptions the fee received for the issuing of such order must be accounted for by the Probate Judge, the same as other fees earned, received and reported by him.

Respectfully submitted

APPROVED:

L. I. MORRIS
Assistant Attorney General

ROY MCKITTRICK
Attorney General

LIM:LeC