

COPY

RECORDER OF DEEDS: Three questions concerning fees for issuing verified copies of discharges in counties of the third class under House Bill No. 772.

February 24, 1947



Honorable William Aull III
Prosecuting Attorney
Lafayette County
Lexington, Missouri

Dear Sir:

Receipt is acknowledged of your letter which reads:

"A question has arisen as to whether or not under House Bill 772 the outgoing Recorder of Deeds of Lafayette County, Missouri, a county of the third class, is entitled to collect the sum of \$.50 for issuing a verified copy of a discharge to a discharged veteran from July 1 to December 31, 1946. The verified copy of the discharge was not requested by the veteran for the purpose of using the same in the prosecution of any claim whatsoever as provided by Sec. 15077, R. S. Mo., 1939.

"(1) The initial question that I desire to have answered is whether or not the outgoing recorder is entitled to receive \$.50 for each verified copy of a discharge given to a discharged service man between the aforesaid dates when the same was merely requested by a discharge veteran, said request not being one made within the provisions of aforesaid Sec. 15077, R. S. Mo. 1939.

"(2) Should the answer to the above question be that the outgoing Recorder is not entitled to \$.50 fee for the verified copy, a further question presents itself. Assume a veteran requests and receives a verified copy of a discharge between July 1 and December 31, 1946. The then Recorder did not charge there for under the belief he would receive \$.50 from the county. In January, 1947, under the term of office of the new Recorder, an additional discharge is requested by said veteran, not for

any of the purposes enumerated in Sec. 15077, R. S. Mo. 1939. The question is: Should the present recorder of Deeds charge said veteran for this second verified copy of discharge or should he issue the same free of charge and collect \$.50 from the county.

"(3) Should the present recorder of Deeds not be entitled to collect \$.50 under the facts afore stated an additional question is presented. Assume the veteran recieves a free, verified copy of a discharge between July 1 and December 31, 1946. In January 1947, he requests a copy of a discharge under the provisions of Sec. 15077, R. S. Mo. 1939. Is the present Recorder entitled to \$.50 from the county for the issuance of this additional discharge?"

Your inquiry presents three principal questions which shall be answered in the order they appear.

In your first question reference is made to House Bill No. 772 which became effective July 1, 1946. Therefore, we assume that you are asking whether or not the outgoing recorder of deeds would be entitled to receive a fee of fifty cents from the county for furnishing certified copies of discharge between July 1, 1946 and December 31, 1946, for Section 2, House Bill No. 772 in part provides:

" * * * For each name which the recorder shall append to the aforesaid alphabetical list, and for each certified copy of such discharge as he shall furnish, the said recorder shall receive the sum of fifty cents, to be paid out of the county treasury, * * * * * " (Emphasis ours)

At the time that House Bill No. 772 became effective the former or outgoing recorder of deeds was holding office, also the period of time between July 1, 1946 and December 31, 1946, was a portion of his term of office. So to answer your first question we must first determine whether or not he would have been entitled to receive the fee for furnishing copies of discharges during his term of office, as provided in the above quoted portion of House Bill No. 772. In an opinion submitted to the Honorable George A. Spencer, prosecuting attorney of Boone County, on July 5, 1946, this department held that the incumbent recorder of deeds in Boone County, a county of the third class, was not entitled to receive a fee of fifty cents, to be paid from the county treasury, for issuing certified copies of discharges because to pay him such fee would constitute an increase in his compensation during his term of office, and would be inconsistent with the constitutional restriction of Section 13, Article VII of the

Constitution of 1945 which, in part, provides that "the compensation of state, county and municipal offices shall not be increased during the term of office." The following is quoted from that opinion:

"The second duty required of the recorders concerns the issuing of discharges to the veterans, or their heirs, on request. This was a function of the recorder prior to House Bill #772, and does not constitute a new and additional duty to that office, and, therefore, falls within the restriction of Article VII, Section 13, of the Constitution of Missouri, 1945. The 50¢ fee allowed for the issuance of the first verified copy would not, therefore, be a proper charge against the county treasury in favor of the incumbent recorders during their terms. This fee will be due to the recorders who are elected at the succeeding elections * * * *. The present recorder shall issue the verified copies as though House Bill #772 had never been passed, and in accordance with Section 15077, R. S. Mo. 1939, as discussed herein later."

Therefore, in answer to your first question we believe that the outgoing recorder of deeds would not be entitled to receive a fee of fifty cents, to be paid from the county treasury, for certified copies of discharges issued to veterans between July 1, 1946, the effective date of House Bill No. 772, and December 31, 1946. The outgoing recorder would not have been entitled to such fee while he was the incumbent office holder, and therefore would not be entitled to it now.

The second question asks if the present recorder of deeds should charge a veteran for an additional verified copy of his discharge when the discharge is requested for a purpose other than those designated in Section 15077, R. S. Mo. 1939, or, should such copy be furnished free to the veteran and the recorder be permitted to collect a fee of fifty cents from the county.

Again reference is made to Section 2 of House Bill No. 772 which, in part, provides:

"* * * * Provided, however, that no such recorder shall be paid * * * * for any additional verified copy after the first. * * * *"

The above quoted portion of the act is a limitation on the provision ahead of it which provides, in substance, that the recorder,

shall receive for each certified copy of the discharge the sum of fifty cents to be paid out of the county treasury. Construing the statute as a whole as to its application to the present recorder of deeds it means that the county may be charged a fee of fifty cents for the first certified copy of a discharge which the recorder furnishes a veteran, but it cannot be charged "for any additional certified copies after the first." It is our notion the Legislature intended that, under no circumstances, could the recorder of deeds collect a fee of fifty cents from the county for furnishing an additional copy of a discharge to a veteran after the first has been furnished. The furnishing of any additional copies should be governed by the provisions of Section 15077, R. S. Mo. 1939, which provides:

"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, any 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 section has not been affected by House Bill No. 772, and if a veteran requests an additional copy to be used for any purpose specified in the statute he would be entitled to such copy requested without charge. However, if he desires a copy for some purpose other than those specified in the statute the recorder would be entitled to charge the person requesting the certified copy the same fee as for any other certificate and seal. He would not be entitled to furnish the certified copy free of charge and collect a fifty cent fee from the county.

In answer to your third question: If the additional certified copy of a discharge is requested by a veteran for any purpose specified in Section 15077, supra, it shall be furnished "without any fee or compensation therefor." The very wording of the statute implies that the recorder would not be entitled to receive any fee from the veteran when the certified copy is requested for a purpose specified in the statute. Further, the provision in House Bill No. 772 that no recorder shall be paid "for any additional verified copy after the first" clearly denies the recorder the right to receive a copy of fifty cents from the county for furnishing additional verified copies of a discharge.

CONCLUSION

Therefore, it is the opinion of this department that in

counties of the third class wherein the offices of circuit clerk and recorder of deeds are separate that:

(1) The former or outgoing recorder of deeds would not be entitled, under House Bill No. 772, to receive a fee of fifty cents to be paid from the county treasury for furnishing certified copies of discharges to veterans between July 1, 1946 and December 31, 1946, which was a period of time comprising a portion of his term of office.

(2) Where an additional certified copy of a discharge is requested of the present recorder of deeds, reference should be had to Section 15077, R. S. Mo. 1939, and if the request for the additional copy is for a purpose set out in the statute, such copy should be issued without charge, otherwise the recorder would be entitled to charge the person requesting the additional verified copy the same fee as for any other certificate and seal. In no event could the additional verified copy be furnished without charge and the recorder be permitted to collect a fee of fifty cents from the county.

(3) Where an additional verified copy of a discharge is requested by a veteran for any purpose designated in Section 15077, R.S.Mo. 1939, the same shall be furnished free of charge and the recorder of deeds would not be entitled to receive a fee of fifty cents from the county for furnishing such copy.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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