RECORDER OF DEEDS: Five questions concerning fees for listing and issuing verified copies of discharges in county of the third class under H. B. 772.

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July 5, 1946

Honorable George A. Spencer
Prosecuting Attorney
Boone County
Columbia, Missouri

Dear Sir:

We hereby acknowledge receipt of your request for an opinion which reads as follows:

> "We have a number of problems that are arising as a result of House Bill Number 772, which permits the Recorder to collect from the county for the list of veterans discharges and giving a copy of the discharge.
>
> "The questions that arise are as follows:
>
> "1. Is the Recorder permitted to charge fifty cents (50¢) for the listing and an additional fifty cents (50¢) for the copy?
>
> "2. When does the bill go into effect so that he can collect from the county for such service?
>
> "3. Should he make an alphabetical list of all resident discharged veterans in Boone County whose discharge papers have previously been recorded, or can he collect only for those recorded after the effective date of the bill?
>
> "4. If the veteran wants more than one copy, is the Recorder required to furnish as many copies as he wants free of charge, or does the veteran pay for the additional copies?

"5. In Boone County we have a particular problem of students coming to school and desiring their discharges to be recorded and certified copies made. Should the Recorder refuse to record these discharges and require them to record them in their home county and get their certified copies there, or is he required under previous laws to record them and make them free, or can he record them and require the veteran to pay for the service?

"I presume that you have answered most of these questions previously and if you have copies of other opinions solving our problems I would appreciate receiving them."

Section 2 of H. B. 772, the basis for your request, provides:

"Section 2. In all counties of the third class wherein the offices of the circuit clerk and recorder of deeds are separate, the recorder of deeds shall, in addition to the duties imposed upon him by law, and by virtue of this article, have the additional responsibility to prepare and keep a separate alphabetical list of the names of all residents of the county who have been discharged from the Armed Forces of the United States, which list shall show such veteran's name, post office address, and the branch of service from which he was discharged, the date of his discharge and the date of the recording of same, together with the book and page wherein such discharge is so recorded, which list shall be maintained by the recorder for public inspection and shall be up to date at all times; and in addition thereto, said recorders in the said counties shall have the additional responsibility of furnishing to all persons who have so reported their discharge from the Armed Forces of the United States one certified copy of such discharge upon request of such veteran, or if such veteran shall have deceased

> since the recording thereof, then by his heir, executor or administrator. 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, which fees shall not be deemed to be accountable fees in determining the maximum amount which the recorder may retain as set forth in Section 1 hereof. Provided, however, that no such recorder shall be paid for the listing of any non-resident of the county, nor for the listing of any such discharge which has previously been so listed in any county, nor for any additional verified copy after the first. A veteran shall be deemed a resident of the county for the purposes of this section if he shall have resided in the county prior to his induction into the Armed Forces, and shall have returned there upon his discharge, or if he shall have resided in the county for more than ninety days next prior to the recording of such discharge with the intention of making the county his domicile."

It is well at the outset to emphasize that this section applies to counties of the third class wherein the offices of circuit clerk and recorder of deeds are separate, and, therefore, this opinion affects only such counties.

We will take the questions set forth in your request in the order that they appear. That part of H. B. 772, which deals with the first question, 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 * * *."

It is to be remembered that in answering question one, we are dealing only with veterans who qualify as residents of the county. In order to answer this question we must determine

whether the listing and the certified copies are each entitled to a fifty cent charge to total one dollar or whether they must be taken together to total fifty cents.

The rule as set out in the case of Haynes v. Unemployment Compensation Commission, 183 S. W. (2d) 77, l. c. 81, is:

> "'The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object, * * * * * * * * *. Cummins v. Kansas City Public Service Co., 334 Mo. 672, 684, 66 S. W. 2d 920, 925; Artophone Corporation v. Coale, 345 Mo. 344, 133 S. W. 2d 343, 347. 'Words and phrases (of a statute) shall be taken in their plain or ordinary and usual sense' (Sec. 355, R. S. 1939, Mo. R.S.A.), * * * * * * * * * * * * * *"

In this light the word "sum," used in the above cited phrase, is defined in Webster's Unabridged Dictionary as: "An amount; as, to receive occasional sums of money; an indefinite (unless specified) amount or quantity of money or currency; * *"

The word "sum" does not necessarily infer that the particular amount of money (50¢) is the result of totalling two or more amounts to arrive at that amount. To the contrary, the very language used in the phrase in question is to the effect that for "each" act the recorder should receive the sum of fifty cents. By way of interpolation the same phrase should be read as though it stated - for each name which the recorder shall append to the aforesaid alphabetical list the said recorder should receive the sum of fifty cents, and for each certified copy of such discharge as he shall furnish the said recorder should receive the sum of fifty cents. This would amount to a total of one dollar to be charged to the county treasury as the result of the performance of both the act of recording and the act of issuing one verified copy of the discharge of a resident veteran.

We must go farther than this, however, and look to the Constitution of Missouri, 1945, Article VII, Section 13, where it is provided:

> "The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended."

This section is patterned after Article XIV, Section 8 of the Constitution of Missouri, 1875.

In the case of State ex rel. Harvey vs. Sheehan, 190 S. W. 864, 269 Mo. 421, wherein the Legislature enacted a law requiring the circuit attorney of the City of St. Louis to attend coroners' inquests in cases of death caused by violence, which might result in charges of felony, an act he was not previously required to do, and for such attendance the circuit attorney should receive $10 for each inquest to be paid by the city. It was claimed that since the circuit attorney was an officer at the time of the passage of the Act, he could not receive this amount since the Constitution prohibited any increase in the pay of an officer during his term of office. The Supreme Court of Missouri, l. c. 429, held:

> "* * * We think this contention unsound because the act in question enjoins upon such officers as appellant new and additional duties and provides merely a compensation therefor. While in some jurisdictions a constitutional provision such as ours has been held to inhibit even this, in this and many other states the contrary doctrine has been accepted and acted upon. (Cunningham v. Current River Railroad Co., 165 Mo. 270; State ex rel. v. Walker, 97 Mo. 162; State ex rel. v. Ranson, 73 Mo. 89; State ex rel. v. McGovney, 92 Mo. 428; County v. Felts, 104 Cal. 60; State ex rel. v. Board of Commissioners, 23 Mont. 250; State ex rel. v. Carson, 6 Wash. 250; Love, Attorney-General v. Baehr, Treasurer, 47 Cal. 364; Purnell v. Mann, 105 Ky. 87; Lewis v. State ex rel. 21 Ohio C.C. 410.)
>
> "It is our opinion that the act is valid and that the appellant is entitled to the fees demanded and that the respondent

> was not justified in refusing to audit the account and draw a warrant therefor on the city treasury."

In applying this principle to your question it becomes paramount to determine whether an additional duty has been added, so as to entitle the incumbent recorder to these fees.

It may certainly be said that the separate alphabetical list of the names of all residents of the county who have been discharged from the armed forces of the United States constitutes an additional duty to the office of the recorder since, prior to this legislation, such duty was inexistent. Therefore, the recorder is entitled to the 50¢ fees involved in the performance of this duty, and Article VII, Section 13, supra, does not prohibit payment of this fee during the term of the present recorders.

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 election for those verified copies issued by their successors. 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.

Concerning question two, H. B. 772 was not passed with an emergency clause. It was signed on March 19, 1946. It will, therefore, be effective as of July 1, 1946, and the recorder, therefore, may not collect the fees referred to in question one until that date.

In answer to question three, H. B. 772 provides in part:

> "Section 2. In all counties of the third class wherein the offices of the circuit clerk and recorder of deeds are separate, the recorder of deeds shall, in addition to the duties imposed upon

> him by law, and by virtue of this article, have the additional responsibility to prepare and keep a separate alphabetical list of the names of all residents of the county who have been discharged from the Armed Forces of the United States, which list shall show such veteran's name, post office address, and the branch of service from which he was discharged, the date of his discharge and the date of the recording of same, together with the book and page wherein such discharge is so recorded, which list shall be maintained by the recorder for public inspection and shall be up to date at all times; * * * * * * * "

Therefore, so far as the first part of this question is concerned the recorder should make an alphabetical list of all resident discharged veterans in Boone County whether their discharge papers are recorded prior to July 1, 1946, or subsequently thereto.

In this regard, a point of confusion may arise from that part of House Bill #772, wherein it is stated:

> "* * * Provided, however, that no such recorder shall be paid for * * * the listing of any such discharge which has previously been so listed in any county * * * ".

It may appear at first blush by virtue of this latter provision that any discharge recorded before July 1, 1946, would not be a proper charge against the county, since until the effective date of this statute, recorders are not entitled to any fee for recording discharges. However, the emphasis is not to be placed on the fact of present recording but rather on previous (alphabetical) listing, such as is called for by House Bill #772. This law provides for an additional duty of making such a list of the names of resident or intended resident veterans. It would not matter, therefore, whether the discharge had been recorded prior to July 1, 1946, or thereafter, and the recorder would be entitled to 50¢ for each name so listed, regardless of the date upon which the discharge was recorded.

We believe the reason for the doubt expressed in question four lies in that part of H. B. 772 which provides:

"Provided, however, that no such recorder shall be paid * * * for any additional verified copy after the first." This part is a limitation on the provisions ahead of it which provides in substance: That the recorder shall receive for each name appended to the alphabetical list and for each certified copy of the discharge the sum of fifty cents "to be paid out of the county treasury." This merely means that the county may be charged for the one certified copy but not "for any additional verified copy after the first." Any additional copy should be handled under 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, 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 section has not been affected by H. B. 772 and if a resident veteran requests an additional copy to be used for any of the privileges specified therein he would be entitled to the additional copy requested without charge. If, however, he desires a copy for some other purpose the recorder would be entitled to charge the person requesting such copy the same fee as for any other certificate and seal.

That part of H. B. 772, upon which the last question is based, is as follows: "Provided, however, that no such recorder shall be paid for the listing of any non-resident of the county, * * *"

As in the discussion to the two previous questions this proviso constitutes an exception to the general provision which immediately precedes it with reference to money being paid out of the county treasury for recording and issuing the first verified copy. It merely means that the county cannot be charged for recording discharges of non-resident veterans.

We must look to the other laws of this state to determine what the rule is with regard to the recording of non-resident veterans' discharges.

Section 15077a, Laws of Mo., 1943, Section 1, page 643, provides:

> "Any person who is the holder of a discharge from the Armed Forces of the United States may demand that said discharge be recorded by the recorder of deeds of any county in this State, including the recorder of deeds of the City of St. Louis, and it shall be the duty of said recorder of deeds to record said discharge without any fee or compensation therefor."

This section is not repealed by H. B. 772. So far as the one who is the holder of a discharge of the armed forces of the United States and also a resident of the county is concerned, H. B. 772 will make no difference except that he or she is entitled to one verified copy without charge to that person regardless of the purpose for which it is to be used. Under Section 15077a, supra, one who is a non-resident veteran is entitled to have his or her discharge recorded without charge and in that event the recorder will not be authorized to assess either the veteran or the county for recording the instrument and the law will stand the same after July 1, 1946, as before in this respect. However, the first verified copy of such recorded discharge of a non-resident veteran will not entitle the recorder to a fee of fifty cents from the county treasury and unless such copy is desired for a purpose set out in Section 15077, R. S. Mo. 1939, supra, the recorder may demand and receive a compensation therefor as in the issuance of any other certificate and seal.

CONCLUSION

It is, therefore, the opinion of this department that in counties of the third class wherein the offices of circuit clerk and recorder of deeds are separate: (1) Under H. B. 772 the recorder is entitled to a fee of fifty cents for listing and fifty cents for issuing a verified copy of the discharge of a resident veteran which sums are to be paid out of the county treasury. The incumbent recorder is entitled only to receive the fifty-cent fee for each name listed and not for issuing verified copies of discharges pursuant to Section 15077, R. S. Mo. 1939. His successor in office may collect both. (2) H. B. 772 does not become effective before July 1,

1946, and the recorder may collect the fees referred to in question one only after that date. (3) Under H. B. 772 the recorder should make an alphabetical list of all resident discharged veterans regardless of the date of the recording of their discharges, and he may collect a fee from the county treasury for all names of such veteran listed regardless of the date of recording. (4) If a resident veteran requests more than one verified copy of his discharge, reference should be had to Section 15077, R. S. Mo. 1939, and if he requests such verified copy for a purpose set out therein the copy should be issued without charge, otherwise the recorder is entitled to charge the one to whom such copy is issued the same fee as for any other certificate and seal. In any event this charge for additional copies may not be assessed against the county treasury. (5) The recorder should record the discharge of non-resident veterans and under H. B. 772 no charge may be made against the county treasury for such recording. Under Section 15077a, Laws of Mo., 1943, Section 1, page 643, the holder of a discharge of the armed forces of the United States is entitled to have the same recorded free of charge in any county and this section would apply in the case of non-resident veterans, resident veterans being handled by H. B. 772. If, after the recording of the discharge of a non-resident veteran, any verified copies thereof are desired for the purposes set out in Section 15077, R. S. Mo. 1939, they should be issued free of charge, otherwise the recorder may charge the one desiring said copy the same fee as for any other certificate and seal, but in no event may the charge for such copy be made against the county treasury.

Respectfully submitted

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APPROVED:

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