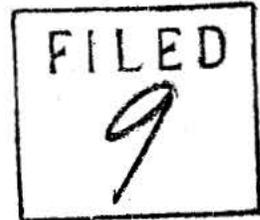


RECORDER OF DEEDS: Recorder of Deeds can collect fees for listing names of veterans and issuing certified copies of discharges although no estimate was made in the budget.

July 18, 1947



7/23

Honorable Ralph R. Bloodworth
Prosecuting Attorney
Butler County
Poplar Bluff, Missouri

Dear Sir:

This will acknowledge your request for an opinion which reads:

"Joseph Hayes, Recorder of Deeds of Butler County, Missouri, has advised with me on some matters concerning his office. I have given Mr. Hayes my opinion on the questions asked, but he still desires an opinion from the Attorney General's office on the questions. Therefore, I am requesting this opinion on behalf of the Recorder of Deeds of Butler County, and my own office, on the following questions:

"1. The law for indexing soldier's discharges became a law in June of 1946. There was nothing in the budget of the Recorder of Deeds at that time to take care of this matter, but the Recorder of Deeds withheld the fees for such indexing from the fees which accrued in his office for 1946. Under the act, is the Recorder of Deeds entitled to hold out the fees for indexing soldier's discharges out of the proceeds of his office accumulating from other fees, or must he turn in an itemized statement of such services rendered to the County Treasurer and collect these fees from warrant? In case the Recorder of Deeds is required to turn in his account for services rendered on this matter to the Treasurer of Butler County, and collect by warrant, the Recorder desires an opinion as to what adjustment should be made on the procedure that he used in collecting on this matter for 1946.

"2. In making up his budget for 1947, the Recorder of Deeds of Butler County did not include in that budget, an estimate of the fees for recording and listing the discharges of veterans of Butler County, Missouri. So if the Recorder of Deeds files an itemized list of fees due his office for such listing, with the County Treasurer of Butler County, and a warrant is issued to him for services rendered, this matter would not be covered by an estimate in his 1947 budget. The Recorder of Deeds desires an opinion as to whether he can collect from the County Treasurer of Butler County for such services rendered, or hold these fees out of the proceeds accruing in his office, without collecting by warrant, in spite of the fact that such an item was not included in his 1947 budget.

"3. Since this item was left out of the 1947 budget, could it be included in the 1948 budget of the Recorder of Deeds of Butler County, Missouri.

Your request generally asks the manner in which the recorder of deeds of Butler county is to collect his fees for listing names of veterans and issuing certified copies of discharges.

Butler county is a county of the 3rd class in which the offices of the circuit clerk and the recorder of deeds are separate.

Section 2 of House Bill No. 772, Laws Missouri 1945, provides as follows:

"In all counties of the third class where- in 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."

(Underscoring ours.)

The above section provides that the recorder of deeds shall be paid his fees for listing names of veterans and issuing certified copies of discharges out of the county treasury, therefore, he could not employ a method in collecting such fees other than what is designated in the statute. Since his fees are to be paid out of the county treasury, we believe he would first be required to submit an itemized statement of the services rendered for which he would be entitled to fees before such fees could be paid. There is nothing in House Bill No. 772, supra, which would authorize him to collect such fees by withholding money out of the proceeds of his office accumulated by the collection of other fees.

Since the fees provided for in House Bill No. 772, supra, that accrued in 1946, were collected by the recorder of deeds withholding the amount of such fees from other fees collected, the question is asked what adjustment should be made so as to comply with the correct procedure for collecting such fees. In this regard we believe that the recorder of deeds should turn into the county treasury the amount of money withheld to pay such fees and also submit a statement of services rendered in listing names of veterans from the effective date of House Bill No. 772 (July 1, 1946) through December 31, 1946.

He would not be entitled to receive a fee of .50¢ to be paid out of the county treasury for furnishing certified copies of discharges to veterans between July 1 and December 31, 1946. We have, in effect, so held in an opinion submitted to William Aull III, prosecuting attorney of Lafayette county, a copy of which we now enclose. During the above period of time he would only be entitled to the .50¢ fee for listing the names of veterans. Consequently when the money he has withheld is turned in he would only be entitled to receive fees for listing names of veterans and none for issuing certified copies of discharges. Beginning January 1, 1947 he would be entitled to receive fees from the county treasury for listing names of veterans and for issuing initial certified copies of discharges to veterans, but not for issuing additional certified copies.

After the moneys, erroneously withheld by the recorder of deeds for 1946 fees, have been turned in and a proper statement submitted to the county treasurer for fees to which he is legally entitled for 1946, namely fees for listing names of veterans, we believe such fees could be paid by the county treasurer out of class six funds, if any are available, as provided in Section 10911, Mo. R.S.A., Laws Missouri 1941, page 650, which reads:

"Class 6. After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose: Provided, however, that the county court shall not incur any expense under class six unless there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under class six: Provided, that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class 6."

You have also presented the question whether or not the recorder of deeds can receive the fees, as provided in House Bill No. 772, for 1947, in view of the fact that in making up his budget for 1947 he made no estimate of the fees he would be entitled to for that year.

Section 10912, R. S. Mo. 1939, in part, provides:

"It is hereby made the express duty of every officer claiming any payment for salary or supplies to furnish to the clerk of the county court, on or before the fifteenth day of January of each year an itemized statement of the estimated amount required for the payment of all salaries or any other expense for personal service of whatever kind during the current year* * * * *"

Under the mandate of this statute the recorder of deeds should include in his budget an estimate of the fees he expects to receive for rendering services as provided in House Bill No. 772. However, in the case of Gill v. Buchanan County, 142 S. W. (2d) 665, the Supreme Court of Missouri was considering whether or not a county judge could recover the balance of his salary which had been erroneously budgeted at \$3000.00 instead of \$4500.00. In overruling the contention of the defendant county that the plaintiff could not recover because there had not been a sufficient amount provided for in the county budget for the payment of such claim, and that the plaintiff had failed to demand payment at the proper time, the court said at l.c. 669:

"* * * * Nevertheless, this court has consistently held that mere failure to claim the balance at the time is not a proper basis for estoppel in these cases. There are several reasons for this, all based upon the following differences between public office and private employment and the different situation of a municipal corporation or a governmental subdivision of the state from a private person or corporation:

"First: Payment of salaries fixed by the Legislature is a duty imposed upon the County by the Legislature, and the county is not entitled to assume that by paying a part of this obligation it has discharged the entire debt.

"Second: To permit estoppel in such cases would make it possible for executive or administrative officers to encroach upon and exercise the legislative functions of fixing salaries of other officers and even ignore the action of the Legislature with regard to them. This is against public policy for many reasons.

"Third: Failure to make a prompt claim cannot mislead a county to its detriment as it might in the case of an individual or private corporation, because a county can only be compelled to make payment out of tax revenue when there is a surplus in any year after all necessary charges have been met, or by a levy when it is not necessary to levy the full amount authorized by constitutional limitations to meet essential expenses, or, if it cannot thus create a surplus or raise funds by levy, to pay otherwise when a bond issue is authorized by the required majority of its citizens, willing to approve it by their votes. * * * * In short, even judgments for valid obligations cannot curtail future essential governmental activities."

In view of the above case it appears that the recorder of deeds should make an estimate of the fees he expects to receive as provided for in House Bill No. 772, supra, when he is preparing his budget for each year, but a failure to include such estimate would not be a bar to recovery and he would be entitled to receive such fees from the county treasury.

CONCLUSION

Therefore, it is our opinion that the proper procedure for the recorder of deeds to follow in collecting fees provided for in House Bill No. 772, Laws Missouri 1945, page 1526, is to submit an itemized statement of services rendered, and the fees for such services, to the county treasurer and thereafter said fees shall be paid to the recorder out of the county treasury. There is nothing to authorize the recorder of deeds to collect such fees by withholding money out of the proceeds of his office accumulated by the collection of other fees. (That said fees for services rendered in 1947 can be collected from the county treasurer although there was no estimate made by the recorder for such services and fees in his budget for 1947. But we believe that payment of these fees must be made from surplus funds available after all expenses for the current year have been paid. Beginning with the year 1948, the recorder of deeds when he is preparing his budget, should make an estimate of the fees he expects to receive and include said estimate in his budget.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

RFT:smw
Enc.

APPROVED:

J. E. TAYLOR
Attorney General