

RECORDER OF DEEDS: Recorder in fourth class counties still receives compensation for performance of duties with respect to veterans' discharges

November 11, 1959



Honorable J. Allen Gibson  
Prosecuting Attorney  
Stone County  
Galena, Missouri

Dear Mr. Gibson:

We have received your request for an opinion of this office, which reads as follows:

"I would appreciate very much having your valuable opinion as to the following matter concerning the compensation of the Circuit Clerk's and Recorder's of these fourth class counties.

"Section 483.371, Mo. RS 1957 Supp, provides that for the performance of their duties required by Section 59.505, Mo. RS 1957 Supp, such clerk shall receive the sum of \$300.00.

"Senate Bill No. 70, repeals Section 59.505, Mo. RS 1957 Supp, and enacts a new section in lieu thereof, No. 59.490, which provides that for the performance of their duties, such clerk shall receive the sum of Fifty Cents (50¢), to be paid by the county treasury.

"The duties required of the Clerk in Section 59.490 are the same as the duties required of the Clerk by Section 59.505.

"Does this new Section 59.490, Senate Bill No. 70, repeal Section 483.371, Mo. RS 1957 Supp, which give the Clerk \$300.00; or is

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the Clerk in Fourth Class counties still entitled to compensation under Section 483.371, which Section was not repealed by said Senate Bill No. 70?"

Sections 39.505 and 483.371, RSMo, 1957 Cum. Supp., originated in Senate Bill No. 166 of the 67th General Assembly, Laws of Missouri, 1953, page 373. As originally enacted, the provisions read as follows:

"1. The circuit clerk and recorder in counties of the fourth class, wherein the offices shall have been combined, as the recorder of the county, shall in addition to other duties imposed upon him by law, 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. 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.

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"2. For the performance of the duties required by subsection 1 of this section the circuit clerk and recorder in counties of class four shall receive the sum of three hundred dollars annually."

In the preparation of the 1953 Cumulative Supplement to the Revised Statutes of Missouri, the revisor numbered Section 1 of Senate Bill No. 166 as Section 59.505 and Section 2 was numbered Section 483.371. In the compilation of the Cumulative Supplement, the revisor accordingly changed the reference, found in Section 2 of Senate Bill No. 166, to Section 1 of said act, to Section 59.505. Whether or not the revisor was authorized so to separate the provisions of Senate Bill No. 166 in the Cumulative Supplement and place them in separate remote sections of the publication may be of academic interest in view of the provisions of Section 3.060, RSMo, which would appear to authorize the transfer of sections only in the preparation of editions of the Revised Statutes. Nevertheless, the change was made in the Cumulative Supplement and the arrangement thereby effected became the basis for reference by the General Assembly in its recent changes in Chapter 59, to which your inquiry relates.

The enactment of the 70th General Assembly, concerning which you inquire, was made by Senate Bill No. 70. The bill was labeled "Revision" and presumably was drafted by the Legislative Research Committee in the performance of its duties with respect to the revision of statutes. The bill repealed Sections 59.020, 59.030, 59.040, 59.059, 59.060, 59.100, 59.280, 59.290, 59.490 and 59.500, RSMo 1949, and Sections 59.270 and 59.505, RSMo, 1957 Cum. Supp., and enacted in lieu thereof six new sections to be known as Sections 59.020, 59.040, 59.100, 59.270, 59.290 and 59.490. Its only provisions with which we are now concerned are repealed Sections 59.490, 59.500 and 59.505 and new Section 59.490.

In language practically identical with that found in Section 1 of the 1953 Act, above quoted, Section 59.490, RSMo 1949, imposed upon the recorder in third class counties the duty of preparing a list of discharged veterans. Section 59.500 made similar provision for third class counties wherein the office of circuit clerk and recorder had been combined. Under each of these provisions the recorder was entitled to receive from the county as a non-accountable fee the sum of fifty cents for each name added to the list.

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Subparagraph 1 of Section 59.590 of Senate Bill No. 70 of the 70th General Assembly, in effect, combined the provisions of Sections 59.490, 59.500 and 59.505 into a single section, to be applied in all counties to which the former three sections applied. It made minor grammatical changes, but essentially the duty imposed remains as it existed under the three superseded provisions.

Subparagraph 2 of Section 59.490, as found in Senate Bill No. 70, reads as follows:

"2. For each name which the recorder or ex officio recorder appends to the alphabetical list, and for each certified copy of the discharge that he furnishes, he shall receive the sum of fifty cents, to be paid out of the county treasury. The fees shall not be deemed to be accountable fees in determining the maximum amount which the recorder may retain as set forth in section 59.250 and shall not be deemed to be accountable fees within the meaning of section 59.260."

No reference is found in Senate Bill No. 70, or in any other enactment of the General Assembly, subsequent to its adoption, to what is now Section 483.371, RSMo, 1957 Cum. Supp.

The reason for the change here under consideration was set forth in the official printed copies of Senate Bill No. 70 as originally introduced and as perfected, as follows:

"Sections 59.490, 59.500 and 59.505, applicable respectively to recorders in third class counties, circuit clerks and ex officio recorders in third and fourth class counties, make identical provisions as to the recording of veterans' discharges except that in fourth class counties no fee is allowed the recorder. The sections are here consolidated in one section. The portions of section 59.490 and 59.500 which provide the fees for the third class county officers are consolidated in subsection two of the new section. The other sections are repealed."

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This explanation was presumably the work of the Legislative Research Committee. Although the statement that the sections referred to allowed no fees to recorders in fourth class counties was technically correct, nevertheless, the statement wholly failed to refer in any manner to the provisions of Section 483.731, which provided the compensation for the recorder in fourth class counties for the performance of such duties.

This explanation makes obvious the fact that the legislation here in question was never intended to reduce the compensation of the recorders in fourth class counties, but was presented to the General Assembly as providing them compensation where none was previously authorized. However, in construing statutes, one must assume that the General Assembly was familiar with existing laws on the subject of their enactments. *Smith v. Pettis County*, 345 Mo. 839, 136 SW2d 282. Therefore, if Senate Bill No. 70 actually had, under any recognized rules of statutory construction and application or under its express language, the effect of nullifying or abrogating the provisions of Section 483.371, such effect must be given it, even though it might have been enacted under the influence of a misleading statement concerning its effect. Where the language of a statute is clear and unambiguous, a court has no right to read into it a legislative intent contrary to that made evident by the phraseology employed. *State ex inf. Rice v. Hawk*, 360 Mo. 490, 228 SW2d 785.

As above mentioned, Section 483.371 is nowhere referred to in Senate Bill No. 70, or in any other enactment, so there is no question of its express repeal. Repeals by implication are, of course, not favored, and, for a later statute to operate as a repeal by implication of an earlier one, there must be such manifest and total repugnance that the two cannot stand. *State ex rel. Peck v. Brown*, 340 Mo. 1189, 105 SW2d 909. Obviously there is no such irreconcilable conflict between subparagraph 2 of Section 59.490 of Senate Bill No. 70 and Section 483.371 as to call for the repeal by implication of the latter.

The only basis which exists for asserting that the provisions of Section 483.371 are no longer effective must lie in the fact that, in authorizing the compensation therein provided, such section now refers to "the duties required by section 59.505." The argument would be that Section 59.505 having been repealed, provision for the duty for which the compensation was provided no longer existed and, therefore, the compensation could not be paid. However, this argument appears to us to

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give undue emphasis to the reference in Section 483.371 to the number given to Section 59.505 and to ignore the fact that, although the section is not now so numbered, the duty imposed remains identical with that which existed under Section 59.505. We find no legal reason which requires that the numbering of a statute must be given precedence over its substance. Numbering is, of course, no part of the substance of the statute. The Legislature did not enact Section 483.371 with a reference to Section 59.505. That change was the act of the revisor of statutes. That numbering is a mere ministerial function which must not be given effect over substance appears from Section 3.060, RSMo, wherein the Legislative Research Committee, in preparing editions to the statutes, is authorized to renumber sections and parts of sections, rearrange sections, change reference numbers, and to transfer, divide or combine sections so as to give to distinct subject matters a section number.

In the present situation, the Legislature has imposed a particular duty upon the recorder of deeds in fourth class counties and has authorized compensation to him for the performance of such duty. With the enactment of Senate Bill No. 70, the identical duty is continued and the compensation statute likewise remains.

Section 1.120, RSMo, provides:

"The provisions of any law or statute which is reenacted, amended or revised, so far as they are the same as those of a prior law, shall be construed as a continuation of such law and not as a new enactment."

Insofar as Senate Bill No. 70 refers to the duties of the recorder in fourth class counties, it is a continuation of the prior act, not a new enactment. The fact that it now appears under a different section number does not make it otherwise.

As above set forth, Senate Bill No. 70, by its terms, now provides in fourth class counties the fifty cent fee for the recorder as is given in third class counties. It is our opinion that this provision must be given effect, but, inasmuch as Senate Bill No. 70 imposes no new or additional duty upon recorders in fourth class counties, such officials may not, under the provisions of Section 13 of Article VII of the Constitution of Missouri, 1945, receive such additional compensation during their current term of office.

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CONCLUSION

Therefore, it is the opinion of this office that the provisions of Section 483.371, RSMo, 1957 Cum. Supp., compensating the circuit clerk and ex officio recorder of deeds in fourth class counties for the performance of duties relating to the preparation of a list of discharged veterans and the recording of veterans' discharges, are not abrogated by the repeal of Section 59.505, RSMo, 1957 Cum. Supp., by Senate Bill No. 70 of the 70th General Assembly and said Section 483.371 remains in effect.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON  
Attorney General

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