

W. J. Ford
12/22/52

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Mr. Jack Cumnard
8 S. Macdonald Street
Mesa, Arizona

W. J. Ford

Dear Jack:

This is in reference to your letter of December 16, 1952, wherein you ask this question:

"Is it permissible for a person who issues marriage licenses to charge more than the legal fee of \$2.00?"

Our statute, Section 63-103, provides that the clerk of the court shall charge \$2.00 for issuing a marriage license. The case of Yuma County v. Wisener, 45 Ariz. 475, 46 P. 2d 115, presented two questions, first, the clerk of the court was charging \$2.00 for issuing the license and \$2.50 for issuing a certificate to be signed by the contracting parties, the witnesses and the official performing the marriage ceremony; second, the clerk was charging the applicants for a marriage license \$7.50 when he went to the office or otherwise issued a license at a time when the office was not regularly open. In this case the clerk was keeping all of the money obtained over and above the legal \$2.00 required by statute to be paid for the license. The court in the Wisener case criticized the clerk in the following language:

"That the conduct set forth in the first cause of action is improper and unethical is obvious to any right-minded person. Any officer who gives a citizen to understand in any manner that the law requires a fee for the performance of a duty in excess of the legal one, and who retains such excess, when paid, for his own use, is certainly guilty of the most reprehensible conduct, which comes perilously near to being a criminal offense, if it is not actually such. * * *"

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In the first instance the court required the clerk to pay the \$2.50 to the county, but in the second instance, that of receiving \$5.50 over and above the required \$2.00 for issuing a license after hours, the court did not require the clerk to pay that money into the county treasurer's office, and commented as follows:

"The situation in regard to the second cause of action, however, is very different. According to it, defendant refused to perform his official duties at a time when he was not required by the law to perform them, unless he was compensated for his extra time and trouble. There is no allegation that he represented, directly or indirectly, to any of the parties so paying him that he was authorized by law to collect such additional sums, and indeed the only reasonable implication from the complaint on this point is that all of such parties well knew that he could not legally be required to issue the license outside of regular office hours, and that, knowing this fact, they voluntarily paid him for doing something which the law did not require him to do, to wit, to attend his office at unusual and extraordinary times. Under such circumstances, we cannot say that he secured the extra compensation under color of office, and he is therefore not obliged to account to plaintiff therefor."

This case definitely settles the question that the clerk of a court may not charge more than the \$2.00 if the license is issued during regular office hours, but that if he issues a license at unusual and extraordinary times the applicant may pay the clerk for this extra and unusual service and not for the license itself.

We trust that this answers your question in such manner that you will be able to satisfy your clients.

Very truly yours,

FRED O. WILSON
Attorney General

CHAS. ROGERS
Assistant Attorney General