

COUNTY OFFICERS: A sheriff is not entitled to a fee for service of a writ of execution in a misdemeanor case where punishment is assessed at a fine and costs, if such fine and costs are paid before the issuance of a writ of execution or at the time of conviction. If such fine and costs are not paid before the issuance of a writ of execution, the sheriffs' fee for service of a writ of execution becomes a part of the costs to be collected by the sheriff.

September 25, 1959



Honorable Robert P. C. Wilson, III
Prosecuting Attorney
Platte County
Platte City, Missouri

Dear Sir:

This is in reply to your request of recent date for an opinion relating to whether a sheriff could collect a one dollar fee for an execution in a criminal case where punishment is assessed at a fine and costs. Your inquiry reads as follows:

"A question has arisen in the Sheriff's office here as to whether, after a conviction in Magistrate Court, and punishment assessed at fine and costs, the Sheriff should collect, as part of the costs, \$1.00 for execution. I would appreciate your opinion on this."

Section 57.290, RSMo Cum. Supp. 1957, the statutory provision for sheriff's fees in criminal cases, reads, in part, as follows:

"1. Sheriffs, county marshals or other officers shall be allowed fees for their services in criminal cases and for all proceedings for contempt or attachment as follows:

* * * * *

For serving every writ of execution. . . . \$1.00."

What constitutes an "execution" is well defined in Brown vs. U.S. 6 Ct. Cl. 171, l.c. 178:

"* * * An execution at law is a writ issuing out of a court, directed to an officer thereof, and running against the body or goods of a party. * * * *"

Honorable Robert P. C. Wilson, III

We are enclosing for your information an opinion dated April 21, 1955, to Honorable J. W. Grossenheider, discussing what constitutes normal court costs in a magistrate court where there has been a conviction of a misdemeanor. Please note that there is a negative implication in this opinion that the one dollar fee to the sheriff for service of a writ of execution is not part of the normal court costs assessed by the magistrate. This opinion assumes that payment is received at the time of conviction for both fine and costs.

Since the sheriff receives the fee under the provisions of Section 57.290, RSMo Cum. Supp. 1957, for "serving every writ of execution," it follows logically that if a defendant pays his fine and costs at the time of his conviction, so that it is not necessary to issue and serve a writ of execution, the fee for serving a writ of execution is not properly included in the costs. On the other hand, if the defendant does not pay the fine and costs and it becomes necessary to issue and serve a writ of execution, the \$1.00 fee for serving a writ of execution becomes a part of the costs to be collected by the sheriff.

CONCLUSION

Therefore, it is the opinion of this office that the \$1.00 fee granted to a sheriff under the provisions of Section 57.290, RSMo Cum. Supp. 1957, for service of a writ of execution is not a part of the costs in the case of a misdemeanor conviction in magistrate court if the defendant pays his fine and the costs at the time of conviction. If the defendant does not pay the fine and costs and it becomes necessary to issue and serve a writ of execution, the \$1.00 fee provided for the service of a writ of execution becomes a part of the costs to be collected by the sheriff.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Jerry B. Buxton.

Yours very truly,

John M. Dalton
Attorney General

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