

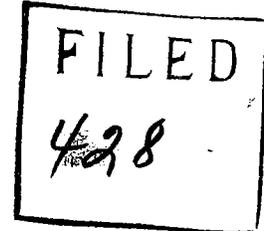
FEEES:
CIRCUIT CLERKS:
COMMON PLEAS CLERKS:
CLERKS OF COURTS OF CRIMINAL
CORRECTION:

The clerks of the common pleas courts, clerks of courts of criminal correction, and circuit clerks to whom House Bill No. 35 of the 75th General Assembly applies should collect the fees therein provided in all cases which are not terminated before October 13, 1969, the effective date of such bill.

OPINION NO. 428

October 14, 1969

Mr. Donald Geers, Circuit Clerk
Twenty-First Judicial Circuit
St. Louis County Court House
Clayton, Missouri 63105



Dear Mr. Geers:

You have requested the opinion of this office as follows:

"Recently the State Legislature revised the taxing of certain court fees relating to criminal and civil matters (See House Bill No. 35).

"This particular bill does not define when this system of flat fee collection should be initiated. At the time this bill becomes law, which is October 13, 1969, the question will arise as to how the clerks in the various jurisdictions will collect those fees as designated in House Bill No. 35 on causes filed prior to that date. We would like an opinion as to a cut-off date on the old manner in which we shall collect these fees relating to causes filed prior to October 13, 1969."

House Bill No. 35 provides as follows:

"Section 1. Sections 483.530 and 483.540, RSMo 1959 are repealed and two new sections enacted in lieu thereof, to be known as sections 483.530 and 483.540 to read as follows:

"483.530. 1. The clerks of the circuit courts, courts of criminal correction, and courts of common pleas of this state possessing criminal jurisdiction shall collect the following fees

Mr. Donald Geers

and no others for their services in criminal proceedings:

"For each criminal case \$7.50

"For each appeal from municipal court . . . 7.50

"The fees collected shall be paid into the county treasury as provided in section 483.560.

"2. No fee shall be charged by any clerk of a circuit court or of a court of common pleas possessing criminal jurisdiction in any criminal cases against the state or any county, unless it is expressly allowed in this section;

* * * *

"483.540. 1. The clerks of the several circuit courts in counties of the first class having a charter form of government and in counties of the second, third, and fourth class, and of the courts of common pleas, shall collect in all civil proceedings the following fees for their services:

"Each civil case, with one defendant. . . \$12.00

"Each additional summons issued for additional defendants 1.00

"Each alias summons issued. 1.00

"Each pluralis summons issued 1.00

"Each third party defendant issued. . . . 1.00

"Each appeal from municipal courts. . . . 10.00

"Each appeal from magistrate courts . . . 10.00

* * *"

Prior to this amendment, Sections 483.530 and 483.540 provided a schedule of fees which the clerk was to charge for the services therein described. It is apparent from the amended section that it was the intention of the legislature to eliminate the item by item accrual of fees and substitute therefor a fee schedule.

You correctly stated that the amended Sections 483.530 and 483.540 contained in House Bill No. 35 will become effective October 13, 1969.

Mr. Donald Geers

Since the present Sections 483.530 and 483.540, RSMo 1959, will be repealed as of that date, there will be no authority providing for the further assessment of fees thereafter other than the amended Sections 483.530 and 483.540 as set forth above.

It has long been the rule in Missouri that court costs are governed by statutory provisions and that these statutes are strictly construed. In *Cramer v. Smith*, 168 S.W.2d 1039 (Mo. en banc 1943) the Court quoted with approval the following language from 20 C.J.S., Costs, Section 435, p. 677:

"At common law costs as such in a criminal case were unknown. As a consequence it is the rule as well in criminal as in civil cases that the recovery and allowance of costs rests entirely on statutory provisions -- that no right to or liability for costs exists in the absence of statutory authorization. Such statutes are penal in their nature, and are to be strictly construed." loc. cit. 168 S.W.2d 1039

Thus, for those cases pending on October 13, 1969, the repealed statutes will not provide authority for fees for services performed subsequent to such date.

Further, in both criminal and civil actions it has been held that the statutory authorization in force at the time of the termination of the action and not during the pendency of the case governs the fees to be charged.

The general rule is stated as follows:

". . . the right to costs and the amount of items taxable are as a general rule governed by the statutes in force at the time of the termination of the action, the time when the right accrues. . . ." 20 C.J.S., Costs, Section 3, p. 263.

Therefore, we conclude that the present schedule of fees should be applied in all cases terminated prior to October 13, 1969, and that the clerk is entitled to collect fees provided for in the fee schedule in House Bill 35 of the 75th General Assembly for all cases not terminated prior to October 13, 1969.

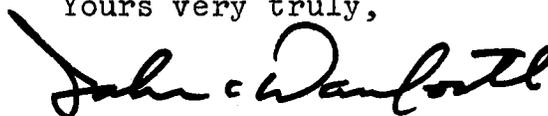
CONCLUSION

It is the opinion of this office that the clerks of the common pleas courts, clerks of courts of criminal correction, and circuit clerks to whom House Bill No. 35 of the 75th General Assembly applies should collect the fees therein provided in all cases which are not terminated before October 13, 1969, the effective date of such bill.

Mr. Donald Geers

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Craft.

Yours very truly,

A handwritten signature in cursive script that reads "John C. Danforth". The signature is written in black ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General