

SHERIFFS: Where the clerk of the magistrate
MAGISTRATES: court and not the sheriff collects
MAGISTRATE CLERKS: certain sums of money under amended
Section 57.130, (Senate Bill No.
100, 77th General Assembly, effective September 28, 1973), the
clerk has no authority to collect the ten percent commission
under subsection 6 of Section 57.290, (Senate Bill No. 516, 76th
General Assembly).

OPINION NO. 306

October 15, 1973

Honorable Richard T. Martin
Prosecuting Attorney
Ozark County
Post Office Box 161
Gainesville, Missouri 65655



Dear Mr. Martin:

This opinion is in response to your question asking:

"Section 57.290(6), V.A.M.S. provides for collection of Magistrate costs by the sheriff and that he shall charge ten per cent on the amount of costs. Act 176 of the 77th General Assembly provides that the clerk of the Magistrate court in counties of the fourth class may collect fines and costs, thus under the new act, is the clerk required where all of the money is collected by the clerk, to charge the ten per cent commission required in Section 57.290(6), V.A.M.S.? If so, to what official should the clerk disburse such commission?"

Subsection 6 of Section 57.290, as amended by Senate Bill No. 516 of the 76th General Assembly, relating to sheriffs' fees in criminal cases, provides:

"These costs shall be taxed as other costs in criminal procedure immediately after conviction of any defendant in any criminal procedure. The clerk shall tax all the costs

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in the case against such defendant and deliver a certified copy of the same to the sheriff, who shall immediately proceed to collect such costs from the defendant, together with ten percent on the amount of costs, so collected, as a commission for collecting the same, and the clerk shall receive of such commission an amount equal to ten percent of the fees collected and due such clerk, and the remainder of such commission shall be retained by the sheriff; provided, that in no case shall such commission be taxed against or paid either by the county or the state; provided further, that all costs, incident to the issuing and serving of writs of scire facias and of writs of fieri facias, and of attachments for witnesses of defendant, shall in no case be paid by the state, but such costs incurred under writs of fieri facias and scire facias shall be paid by the defendant and his sureties, and costs for attachments for witnesses shall be paid by such witnesses."

In our enclosed Opinion No. 239, 1973, we concluded that the amendment to Section 57.130, (Senate Bill No. 100, 77th General Assembly, effective September 28, 1973), authorizes the clerks of the magistrate courts of certain counties to collect fines, penalties and forfeitures and other sums of money accruing to the state by virtue of a magistrate court order but requires the sheriffs of such counties to make such collections if the clerks do not do so. In that opinion we also noted (page 2) that it was our view that where the clerk and not the sheriff makes the collections the sheriff is not entitled to the fee under such circumstances. This would be true even though the fee may go to the general revenue of the county if it were collected.

We find no authority for the clerk to charge the commission under subsection 6 of Section 57.290.

CONCLUSION

It is the opinion of this office that where the clerk of the magistrate court and not the sheriff collects certain sums of money under amended Section 57.130, (Senate Bill No. 100, 77th

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General Assembly, effective September 28, 1973), the clerk has no authority to collect the ten percent commission under subsection 6 of Section 57.290, (Senate Bill No. 516, 76th General Assembly).

The foregoing opinion, which I hereby approve was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 239
8-21-73, Fickle