

✓ JUSTICE OF PEACE )  
✓ FEES )  
CRIMINAL COSTS ) Justice of the peace is entitled to a record  
fifty cents for entering his decision on  
record in a preliminary hearing.

June 26, 1933.

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Hon. Forrest Smith  
State Auditor  
Jefferson City, Missouri

Dear Mr. Smith:

This department acknowledges receipt of your letter dated June 20th, 1933, as follows:

"We would be pleased to have the opinion of your department upon the following questions regarding fees of Justices of the Peace incurred at a preliminary hearing of a criminal charge:

1. Can a Justice of the Peace charge 50¢ for a transcript of the preliminary proceeding?
2. Can such a Justice charge 50¢ for judgment?

It has been the position of all previous Auditors that no such charge could be made and our position is set out in the attached brief sent to Mr. Jack Savage, Justice of the Peace of Rockport, Missouri.

If it is convenient, our Mr. McGregor, who has charge of criminal costs, would be pleased to talk to the Assistant Attorney General to whom this question may be assigned."

Section 37 of Article VI of the Constitution of the State of Missouri provides that,

"In each county there shall be appointed, or elected, as many justices of the peace as the public good may require, his powers, duties and duration in office shall be regulated by law."

A justice of the peace, therefore, is a constitutional officer.

Among the duties of a justice of the peace, as prescribed by law, is the right to hold and conduct preliminary examinations in felony cases as provided in Article V of Chapter 29 of the Revised Statutes of Missouri, 1929.

Upon complaint being filed with the justice of the peace, setting forth that a felony has been committed and the name of the person accused thereof, it shall become the duty of the justice to issue a warrant directing the arrest of the accused. Under the provisions of Section 3473, when the accused is brought before the justice he is required to examine the complainant and witnesses produced in support of the prosecution on oath and in the presence of the prisoner in regard to the offense charged, and the witnesses may be examined as to other matters connected with such charge as in the judgment of the justice may be pertinent to the issue. By Section 3477 the justice is required to inform the prisoner there is a charge against him; read to him the complaint as required and allow the prisoner reasonable time to advise with counsel. By Section 3478 a justice may exclude from the place where the examination is being held all witnesses other than the one under examination. Under Section 3479 the hearing is to be conducted with respect to the introduction of evidence and the examination of witnesses in the same manner as in the trial of causes in courts of record so far as applicable. By Section 3480, in cases of homicide only, the evidence given by the witnesses shall be reduced to writing by the justice or under his direction. By Section 3481 the accused may present witnesses on his behalf and at his request he may be sworn as a witness. Under Section 3482, if, upon examination of the whole matter, issue and testimony, it appears to the justice either that no offense has been committed by any person or that there is no probable cause for charging the accused with such crime, if committed, the justice shall discharge the accused. By Section 3483, if it appears to the justice that a felony has been committed and that there is probable cause to believe the prisoner guilty thereof, the

magistrate shall bind by recognizance the prosecutor and all material witnesses against such prisoner to appear and testify before the court having cognizance of the offense.

It necessarily follows, therefore, that if the justice finds that a crime has been committed and that there is probable cause to believe the accused guilty thereof, then, it is the duty of the justice to so find and make a record thereof.

By section 3489 the justice is required to certify to the clerk of the court having jurisdiction of the offense all examinations and recognizances taken in pursuance of the holding of the preliminary hearing.

That justices of the peace are courts of limited powers without common law jurisdiction, and that they can only do the things which the statutes prescribe they may do, cannot be doubted. It is apparent that the holding of the preliminary hearing is an important and solemn step in determining a charge against an accused, upon conviction of which he may be fined, imprisoned or his life taken, and in determining whether or not the finding of a justice of the peace on a preliminary hearing is a judgment within the meaning of Section 11778 R. S. Mo. 1929, we must keep in mind the kind and character of the hearing that is being held, the question at issue and the thing that is to be determined.

In *Eppright v. Kauffman*, 90 Mo. 25, the Supreme Court of this State at page 97, in defining what is meant by "judgment", said,

"If the statute is not meaningless, then its provisions bring the allowed claim of the plaintiff fully within the definition of a judgment given by Mr. Freeman. He says: 'A judgment \* \* \* is defined as being, 'the decision or sentence of the law pronounced by a court or other competent tribunal upon the matter contained in the record.' Freeman on Judg., sec. 2. 'Every definite sentence or decision by which the merits of a cause are determined, although it be not technically a judgment, or although the proceedings are not capable of being technically enrolled so as to constitute what is technically called a record, is a judgment within the meaning of the law.' *Ib.*, sec. 16. 'A large number of persons and

tribunals not ordinarily spoken of as 'judges,' nor as 'courts,' are nevertheless authorized to investigate and determine certain questions. Their authority in this respect is judicial; and their determinations are conclusive unless set aside by some competent authority.' *Ib.*, sec. 531."

With reference to preliminary hearings, 16 C. J. p. 333 with reference to the final decision of the justice on a preliminary hearing, states,

"Such conclusion or opinion of the examining magistrate is a judicial determination, and is essential as a basis of the proceedings by information."

In *State v. Beaverstav*, 12 N. D. 527 - 530, discussing the effect of a decision of a justice of the peace upon a preliminary hearing said,

"The function exercised by the magistrate in such examination is a judicial one, and the finding and determination made by him, if the statutory bounds and requirements have been observed and followed, is entitled to the same respect and is of the same binding force as against collateral attack by habeas corpus as is the judgment of a court of general jurisdiction."

Suppose the defendant in a felony case charged by information filed in the circuit court should file a plea in abatement on the ground that he had not been accorded the right of a preliminary hearing, whereupon the prosecuting attorney asserted the accused had had such a hearing and offered in evidence the files certified by the justice of the peace, it is evident that such evidence would not prove a preliminary hearing had been held but it would be necessary to go further and show the finding and decision of the justice of the peace, and that finding and decision could not be collaterally attacked.

We are of the opinion that the finding and decision of the justice of the peace upon a preliminary hearing held, is

a judgment within the meaning of Section 11778, R. S. No. 1929, and that a justice of the peace is entitled to be paid fifty cents for the entering of such judgment, where otherwise allowable.

Very truly yours,

GILBERT LAMB  
Assistant Attorney-General.

APPROVED: ROY McKITTRICK  
Attorney-General.

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