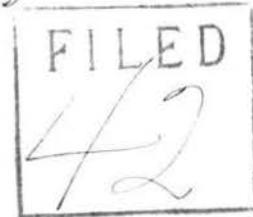


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COSTS AND FEES:-In appeal to Supreme Court, fees of clerk for making out transcript shall be paid by the state or county if defendant is unable to pay the same, but clerk cannot require payment in advance.

11757RS Mo 1929

December 27, 1933. i-5-34



Mr. Jesse House,
Circuit Clerk of Polk County,
Bolivar, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"I am writing in regard to fees due the Circuit Clerk for cost of appeal in a criminal case. What cost is due the Clerk for Transcript of record and copy of Bill of Exceptions when a case is appealed and the defendant is not taking appeal as a poor person? If the defendant appeals as a poor person does the State pay the cost of appeal? If not, is the defendant liable for the cost of appeal at the time that the appeal is taken?"

Section 3756, R. S. Mo. 1929, provides as follows:

"When any appeal shall be taken or writ of error issued, which shall operate as a stay of proceedings it shall be the duty of the clerk of the court in which the proceedings were had to make out a full transcript of the record in the cause including the bill of exceptions, judgment and sentence, and certify and transmit same to the office of the clerk of the proper appellate court without delay: Provided, however, that any abbreviated or partial transcript of the evidence and oral proceedings, in narrative form or otherwise which the defendant or his attorney for the state may agree upon in writing as sufficiently presenting to the appellate court the issues involved on such appeal, shall be deemed and taken as sufficient on such appeal and shall by the clerk be incorporated in the transcript of the record certified and transmitted by him to the appellate court, instead of the bill of exceptions mentioned above."

In State ex rel. v. Daily, 45 Mo. 153, 156, it is said:

"The duty, then, of sending up a proper transcript, upon supersedeas in a criminal prosecution,

is imperative, and is personal to the clerk, without the application of the accused. It becomes essential to the further prosecution of the case, and to the execution of the judgment, in which the accused may have no interest; is a duty imposed after an order of supersedeas by the court or a judge, and is essential to the object of the order; and for the performance of this duty the law imposes upon no one the obligation of advancing the fees."

Section 3757, R. S. Mo. 1929, provides as follows:

"When the appeal or writ of error does not operate as a stay of proceedings, such transcript shall be made out, certified and returned, on the application of the appellant or plaintiff in error, as in civil cases, except that the costs of the transcript shall not be required in advance."

In *The State v. McCarver*, 113 Mo. 602, 605, the Court says;

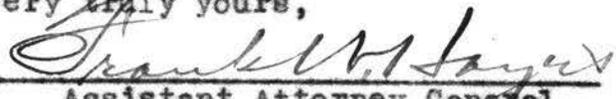
"Under the provisions of section 4294 Revised Statutes, 1889, the clerk was required on the application of the defendant to make out, certify and return a full transcript of the record, etc., in the cause, and he had no authority to require the costs of the transcript in advance."

Section 11787 R. S. Mo. 1929, provides what fee the clerk shall charge for various services rendered, and provides "for transcripts to the Supreme Court, for each 100 words, 10¢." The section further provides:

"Provided that when any defendant in a criminal case shall be granted an appeal to the Supreme Court the fees of the clerk for making out and certifying transcript shall be paid by the state or county if the defendant shall be unable to pay the same."

It is therefore our opinion that a clerk is entitled to charge 10¢ for every one hundred words for transcript, and if the defendant is unable to pay the same the fees, for making out and certifying the transcript shall be paid by the state or county, and that the clerk cannot require the costs of the transcript to be paid in advance.

Very truly yours,


Assistant Attorney General.

APPROVED:

Attorney General.