

JUSTICES OF THE PEACE - Fees - Transcript fees in criminal cases.

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May 26, 1935

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Hon. Richard Chapler,
Prosecuting Attorney,
The County of Randolph,
Moberly, Missouri.

Dear Sir:

A request for an opinion has been received from you dated March 6, 1935, in which the following question is asked:

"Section 11778, Revised Statutes of Missouri, 1929, allows Justice of the Peace 50¢ for entering judgment in every case. May the Justice also charge 50¢ for the transcript and 30¢ for 'certifying all papers and recognizances in a criminal case other than homicide'. The County Court is endeavoring to disallow these fees to Justice of the Peace."

There can be no question about the propriety of the fee of 50¢ to be allowed a justice "for entering judgment in every case" which is provided for in Section 11778. Also the statute expressly authorizes a fee of 50¢ "for certifying all papers and recognizances in a criminal case other than homicide". The only question then is whether, in a case in which the imposition of the above two fees is authorized by the statute, there can be an additional fee of 30¢ allowed for the transcript.

R. S. Missouri, 1929, Section 3451, relating to criminal proceedings before justices of the peace, provides as follows:

"When an appeal is taken and perfected according to this article, it shall be the duty of the justice to cause all material witnesses to enter into a recognizance, in the sum of fifty dollars each, conditioned for their appearance to testify in the cause at the term to which the appeal is returnable, and shall file

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in the office of the clerk of the court having jurisdiction of the appeal, within three days after the appeal is taken, a copy of the entries on his docket, with the affidavit of appeal and all the original papers filed in the case, including the recognizance of the witnesses and of the defendant for his appeal, duly certified by the Justice."

The duty imposed by such section seems to be the basis of the fee of 50¢ authorized by Section 11778 for certifying all papers and recognizance in a criminal case other than homicide".

Section 3451 relates to misdemeanors. Section 3489 relates to certification of examinations and recognizances in proceedings before justices involving felonies, and provides as follows:

"All examinations and recognizances taken in pursuance of the provisions of this article shall be certified by the magistrate taking the same, and delivered to the clerk of the court in which the offense is cognizable, on or before the first day of the next term thereof, except that where the prisoner is committed to jail, the examination of himself and of the witnesses for or against him, duly certified, shall accompany the warrant of commitment, and be delivered therewith to the jailer."

The language last quoted from Section 11778 would seem applicable and to warrant a fee of 50¢ for certification under this Section 3489 where a felony is involved, as would it warrant such a charge under Section 3451 where a misdemeanor was involved.

Section 11778 which enumerates the various services for which justices of the peace may charge fees, does not mention or use the word "transcript". Furthermore, that which the justice sends to the higher court under Section 3451 or Section 3489 is itself a transcript of the proceedings had before him, and since Section 11778 authorizes specifically a fee to the justice for performing such duty, we do not believe that another fee for performing the same duty could be authorized by giving to such duty a different name.

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In conclusion, it is our opinion that in a criminal case involving misdemeanor before a justice of the peace, in which judgment is entered, the justice is entitled to a fee of 50¢ for entering such judgment; that if such judgment was against the defendant, and an appeal taken therefrom, the justice of the peace is entitled to an additional fee of 50¢ for certifying all papers and recognizance to the office of the clerk of the court having jurisdiction of the appeal, under the provisions of R. S. Missouri, 1929, section 3481, but that no additional fee may be charged as a transcript fee; that where a criminal proceeding before a justice involves a felony other than homicide, such justice is entitled to a fee of 50¢ for certifying all papers and recognizance to the clerk of the court in which the offense is cognizable, under the provisions of R. S. Missouri, 1929, section 3485, but that no transcript fee other than this can be charged by such justice.

Very truly yours,

EDWARD H. MILLER
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General