

SUPPLEMENTAL FEE BILLS: When witness must make application  
for fees.

8-22  
August 20, 1935



Mr. O. B. Jennings,  
Clerk, Circuit Court and Ex-officio Recorder,  
Howell County,  
West Plains, Missouri.

Dear Sir:

We wish to acknowledge your request for an opinion  
under date of August 6, 1935, wherein you state as follows:

"How long, in your opinion does  
a witness have after a case is com-  
pleted to claim fees. For instance,  
a witness comes in a month or more  
after a case has been completed and  
a cost bill sent to the State or  
County to be paid. Can he claim his  
fees and collect on a supplemental  
cost bill?"

Section 11799, R. S. Mo. 1929, provides how fees  
shall be paid witnesses and states as follows:

"The clerk of each court of record  
shall, on the application of any  
witness to have his fees allowed,  
enter on his book, under the title  
of the cause in which the witness  
was summoned or recognized, or if  
before the grand jury, the name of  
the witness, the number of days he  
has attended and the number of  
miles he has necessarily to travel  
in consequence of the summons or  
recognizance, and shall swear the  
witness to the truth of the facts  
contained in said entry, and it  
shall be the duty of the clerk to

make out and deliver to each witness attending before the grand jury, and entitled to fees therefor, a scrip as required in case of grand jurors, which scrip shall be countersigned by the foreman of the grand jury, and shall be paid by the county treasurer in like manner as now by law required for the pay of grand jurors; and the clerk shall be allowed the same compensation for said services as is now allowed by law for like services in issuing scrip to grand jurors."

It will be noted that witnesses must make application for their fees, and that it is not the duty of the clerks of the courts of record to enter it on their books until same is done.

Section 3841, R. S. Mo. 1929, makes it the duty of the clerk to make out fee bills, thus:

"The clerk of the court in which any criminal cause shall have been determined or continued generally shall, immediately after the adjournment of the court and before the next succeeding term, tax all costs which have accrued in the case; and if the state or county shall be liable under the provisions of this article for such costs or any part thereof, he shall make out and deliver forthwith to the prosecuting attorney of said county a complete fee bill, specifying each item of services and the fee therefor."

Under this section the clerk of the court must tax all costs immediately after the adjournment of the court and before the next succeeding term, and it would appear, therefore, that a witness claiming a fee must make application before the next succeeding term of court in which he appeared.

Section 3849, R. S. Mo. 1929, provides when a supplemental fee bill may be issued and states that

"When the clerk shall send a bill of costs to the state auditor or county court, as provided in the next preceding section, he shall expressly state in his certificate that he has not at any previous time certified or sent a copy of the same bill, or part thereof, for payment: Provided, that if the clerk shall by oversight or mistake, fail to include any costs properly chargeable against the state or county in any fee bill, he may make out and present, as hereinbefore provided for making out bills of costs, a supplemental bill for the costs so omitted: Provided, that the clerk shall in no case charge or receive any fee or fees whatsoever for the issuance of such supplemental fee bill."

The above section provides that if the clerk, by oversight or mistake, fails to include any costs properly chargeable against the state or county in a fee bill, he may issue a supplemental fee bill. Certainly it can not be said that an oversight or mistake has been made when the witness fails to make application for his fees.

In the case of State ex rel. v. Seibert, 130 Mo. 202, 1. c. 217, our court said:

"At common law no recovery of costs was allowable, and when statutes were passed allowing costs they were always strictly construed."

Following a strict rule of construction, we are of the opinion that if a witness fails to make proper application to the court to have his fees allowed either before or immediately after the adjournment of court and before the next succeeding term, he is barred from later appearing before the clerk and making application for same.

Section 11416, R. S. Mo. 1929, provides that claims against the state must be exhibited within two years and

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states as follows:

"Persons having claims against the state shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled and allowed, within two years after such claims shall accrue, and not thereafter."

Under the above section, we are of the opinion that if it can be shown that the witness did make proper application as provided by Section 11799, supra, and that he failed to receive his fees due to an oversight or mistake of the clerk, he may within two years from the final determination of the prosecution make a claim for same by a supplemental fee bill, as provided by Section 3849, supra. (State ex rel. Johnson v. Draper, 48 Mo. 56, l. c. 58.)

Respectfully submitted,

Wm. ORR SAWYERS,  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK,  
Attorney General.

WOS:

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