

PENITENTIARY

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- (1) Penitentiary liable for fees of Circuit Clerk for furnishing certified copies of Information and Judgment, requested by it.
- (2) Fees of Circuit Clerk for furnishing certified copies of Record to Penitentiary necessary to return a fugitive from justice, should be paid out of fund provided for apprehension of criminals.

CIRCUIT CLERK.

5-22
May 20, 1935.



Mr. J. M. Sanders
Warden
Missouri State Penitentiary
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this office which reads as follows:

"In preparing requisition papers for the return of Arthur Powers, our Reg. #33984, who is a parole violator from this prison and who is now confined in the United States Penitentiary at Leavenworth, Kansas, it was necessary to get certified copies of the Prosecuting Attorney's Information and also to have certified copies of the original sentence and judgment. It was necessary for the Circuit Clerk of Nodaway County, from which county the man was sentenced, to prepare these papers. He submitted a bill for his services to the prison authorities.

"This office would like to know if the penitentiary is liable for these fees; and, if so, whether such fees are properly chargeable to ordinary operating expenses of the institution or if the expenses should be paid out of the fund provided for the apprehension of criminals.

"An opinion from your office at your earliest convenience will be appreciated."

Section 11787, R. S. Mo. 1929, specifies the fees a clerk of a court possessing criminal jurisdiction is entitled to for his services in criminal proceedings. Said section reads in part as follows:

"For copies of records and papers,
for every hundred words..... .10

"For each certificate and seal
authenticating a copy of a
record..... .50

"No fee shall be charged by any clerk
in any criminal case against the state
or any county, unless it is expressly
allowed in this section: *****"

The above section expressly allows a clerk of a court, possessing criminal jurisdiction, to charge for all copies of records and for authenticating said copies.

Section 11814, Laws of Missouri, 1933, makes it the duty of the clerks of all courts of record to charge and collect every fee accruing to their offices except such fees as are chargeable to the county. Said section reads in part as follows:

"It shall be the duty of the clerks of
all courts of record to charge and
collect, in all cases, every fee
accruing to their offices under the
provisions of sections 11785, 11787,
and 11788, or of any other statute,
except such fees as are chargeable to
the county, *****"

In view of the above, it is the opinion of this department that it is the duty of the circuit clerk to charge and collect the fees specified in Section 11787, supra, for furnishing a certified copy of an Information and Judgment at the request of the Department of Penal Institutions and that said Department is liable for the payment of said fees.

You inquire whether such fees are chargeable to ordinary operating expenses of the institutions or to the fund provided for the apprehension of criminals. It is evident that it was necessary to secure the certified copies in question in order to apprehend and bring back the prisoner to the State Penitentiary. It is therefore our opinion that fees of the circuit clerk for making out and furnishing certified copies of the record, necessary to return a fugitive from justice to this State, should be charged against and paid out of the fund provided for the apprehension of criminals.

Yours very truly,

J. E. TAYLOR
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JET/afj