

MAGISTRATE COURTS: Fees in criminal cases.

February 10, 1947

Honorable Gordon J. Massey  
Prosecuting Attorney  
Christian County  
Ozark, Missouri



Dear Sir:

We are in receipt of your request for our opinion concerning the fees to be charged by the newly created magistrate courts in criminal cases.

Magistrate courts were created by Senate Bill No. 207, enacted by the 63rd General Assembly (now Chapter 11A, Mo. R.S.A.), and their jurisdiction in civil cases is clearly defined in that enactment. By its terms Senate Bill No. 207 relates only to civil cases, and the costs to be recovered by such courts in criminal cases are not referred to therein.

Senate Bill No. 193, enacted by the 63rd General Assembly (Article 4A, Chapter 30, Mo. R.S.A.), defines the powers of the magistrate courts with reference to misdemeanors. Section 3856.1, Mo. R.S.A., is as follows:

"Magistrates shall have concurrent original jurisdiction with the circuit court, co-extensive with their respective counties in all cases of misdemeanor, \* \* \*"

Section 3856.29, Mo. R.S.A., provides:

"All proceedings upon the trial of misdemeanors before magistrate shall be governed by the practice in criminal cases in circuit courts, so far as the same may be applicable, \* \* \*"

Senate Bill No. 350, enacted by the 63rd General Assembly, and effective on January 1, 1947, except in counties

having township organization, in which incumbent justices of the peace hold office after January 1, 1947, repealed all the general provisions of our statutes relating to jurisdiction of justices of the peace in misdemeanors, and except in counties with township organization, where the effective date is delayed, justice of the peace courts have no legal existence.

Senate Bill No. 352, enacted by the 63rd General Assembly, and effective January 1, 1947, and Senate Bill No. 281, also effective January 1, 1947, effectively transferred to magistrates the powers formerly held by justices of the peace in preliminary examinations of those charged with the commission of a felony.

Your inquiry suggests that magistrates may yet be governed by Sections 13400 and 13401, R.S.Mo. 1939, in the fees to be charged for their services in criminal causes. We find, however, that those sections were repealed by Senate Bill No. 334, effective January 1, 1947, except as to those justices of the peace whose terms expire at a later date.

Senate Bill No. 333, enacted by the 63rd General Assembly (Section 13403.1, Mo. R.S.A.), and effective January 1, 1947, fixes the fees for certain services of the clerk of the magistrate court, and is as follows:

- "There shall be charged and collected by the clerks of the magistrate courts fees for certain of their services, as follows:
- "For issuing each execution. . . . . \$0.35
- "For each renewal of execution. . . . . .25
- "For making certified copies on appeals or certiorari, for each 100 words. . . . . .10
- "For writing depositions, when required to do so, for every 100 words. . . . . .15
- "For writing and certifying evidence of witnesses in the cases of homicide, for every 100 words and figures. . . . . .15

"For copies of records, pleadings or instruments on file in the office of such clerks, for every 100 words and figures. . . . .10

"All such fees shall be charged on behalf of the State or county paying salary of such clerk and shall be paid and accounted for in the same manner as magistrate fees."

Section 13409, R.S. Mo. 1939, applies to all courts in this state having criminal jurisdiction, and the magistrate courts are now within that classification, as pointed out above. The latter section is not set out herein because of its length, but with Senate Bill No. 333, above, it covers all possible charges which may be incurred by magistrate courts and the clerks thereof.

CONCLUSION

It is, therefore, our conclusion that costs in criminal cases in magistrate courts in Missouri are governed by Section 13409, R.S. Mo. 1939, and Senate Bill No. 333 (Section 13403.1, Mo. R.S.A.), enacted by the 63rd General Assembly.

Respectfully submitted,

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APPROVED:

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