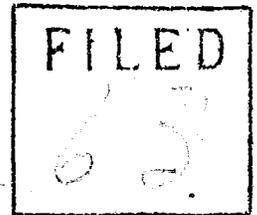


MAGISTRATE COURTS: Where defendant is unable to pay costs, fee bill for same is prepared
CRIMINAL COSTS : by magistrate and submitted to the clerk of the Circuit Court.

June 19, 1947



Honorable E. L. Monroe
Probate Judge
Cassville, Missouri

Dear Sir:

Receipt is acknowledged of your request for an official opinion, which reads:

"With regard to the matter of payment of costs in criminal matters in Magistrate Court by the County when defendants are unable to pay said costs.

"Statutory provisions for courts of record provide, in general, that the Clerk of the Court in which any criminal cause shall have been determined shall tax the costs, deliver a fee bill to the prosecuting attorney, who together with the judge shall certify the fee bill to the State Auditor or County Clerk, depending on who shall pay (Secs. 4236, 4237, R.S. Mo. 1939).

"Sec. 4246, R.S. Mo. 1939, provides that when the State or County shall be liable for costs incurred in any criminal matter before any Justice of the Peace, the Justice shall make out, certify and return to the Clerk of the Circuit or Criminal Court of the county a complete fee bill, together with all the papers and docket entries in the case, and the Circuit Clerk shall then proceed in the manner provided for fee bills made out for costs incurred in such a court of record.

"Respectfully request an opinion of your office as to whether the Magistrate Courts should proceed as other courts of record in preparing and collecting such fee bills, or whether the 'catch-all' statute (Sect. 656.1), giving to the words 'Justice of the Peace' the meaning of 'Magistrate' requires that such fee bills be processed through the office of the Circuit Clerk, under Sec. 4246."

The principal question in your letter of inquiry asks the procedure to be followed in the Magistrate Court for handling costs in misdemeanor cases before the Magistrate Court when the defendant is unable to pay same. Section 4222, R.S. Mo. 1939, provides as follows:

"When the defendant is sentenced to imprisonment in the county jail, or to pay a fine, or both, and is unable to pay the costs, the county in which the indictment was found or information filed shall pay the costs, except such as were incurred on the part of the defendant."

In the act providing for the procedure for Magistrate Courts in misdemeanor cases (Senate Bill No. 193, Laws of Missouri 1945, page 750) we find no provisions regarding the preparation and submission of fee bills for costs in misdemeanor cases when the defendant is unable to pay. Section 20 of Article V of the Constitution of 1945, in part, provides:

"Until otherwise provided by law consistent with this Constitution, the practice, procedure, administration and jurisdiction of magistrate courts, and appeals therefrom, shall be as now provided by law for justices of the peace; * * * *"

Senate Bill No. 281, approved December 7, 1945, Laws of Missouri 1945, page 1079, Section 1, provides as follows:

"Whenever, in any statute, the word 'justice' (referring to justice of the peace) or the words 'justice of the peace' appear, said word or words shall hereafter be deemed to include and refer to 'magistrate,' unless there be something in the

subject or context repugnant to such construction."

Since the present magistrate law, hereinbefore referred to, provides no procedure for the preparation of fee bills in misdemeanor cases before the Magistrate Court when the county is liable for costs, we must abide by the mandate of the above constitutional and statutory provisions and look to the procedure provided by law for Justice of the Peace Courts,

Section 4246, R.S. Mo. 1939, provides as follows:

"Whenever the state or county shall be liable under the provisions of this article, or any other law, for costs incurred in any examination of any felony, or in the trial of any misdemeanor before any justice of the peace, it shall be the duty of such justice to make out, certify and return to the clerk of the circuit or criminal court of the county a complete fee bill, specifying each item of service and the fee therefor, together with all the papers and docket entries in the case; and it shall thereupon be the duty of such clerk to make out a proper fee bill of such costs, which shall be properly and legally chargeable against the state or county, which shall be examined by the prosecuting attorney, and proceeded with in all respects as a fee bill made out for costs incurred in such court of record."

Conclusion.

It is, therefore, the opinion of this department that in misdemeanor cases before the Magistrate Court where the defendant is unable to pay the costs and the county is liable for costs, as provided in Section 4222, R.S. Mo. 1939, the magistrate shall prepare, certify and deliver a fee bill for costs, together with all the papers and docket entries in such cases, to the clerk of the Circuit Court or the Criminal

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Court of the county, as provided in Section 4246, R.S. Mo. 1939. Thereafter, the procedure to be followed shall be governed by Sections 4236 and 4237, R.S. Mo. 1939, relating to courts of record.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RFT:ml