

MAGISTRATE COURTS:
FEES:
PROSECUTING ATTORNEYS:

Several questions relating to the assessment, and collection of fees in the magistrate courts, and the certification of fee bills in connection therewith.

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Mr. Robert G. Kirkland,
Prosecuting Attorney,
Clay County,
Liberty, Missouri.

Dear Mr. Kirkland:

We have your recent request for an opinion from this office. Your letter of request is as follows:

"Please furnish this office for the use of the Clerk of the Circuit Court with an official opinion on the following propositions:

"1. Is the Clerk of a Magistrate Court entitled to charge as costs in the case any fee for making up and certifying transcripts of the record in cases, either criminal or civil, appealed from the Magistrate Court to the Circuit Court (that is, over and above the \$2.50 or \$5.00 taxed as magistrate fee)? What is the proper fee? Must such fee, if any, be collected from the appellant at the time the appeal is taken or must it be taxed as court costs and collected by the Circuit Clerk?

"2. In all criminal cases sent from a Magistrate Court to the Circuit Court, whether on appeal, or after the defendant has been bound over following preliminary hearing, or for costs only, must the fee bills sent with the cases by the Clerk of the Magistrate Court be certified to by the Prosecuting Attorney before they can be paid or collected by the Clerk of the Circuit Court?"

Your first question is whether the clerk is entitled to any fee for certifying the transcripts of the record on appeal to the Circuit Court in addition to the \$2.50 provided for criminal cases, and the \$5.00 for civil cases.

Laws 1947, Vol. 1, page 240, provides in part as follows:

"A fee of five (\$5.00) dollars shall, be allowed

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the magistrate in each civil proceeding, general or special, instituted in his court. Upon the commencement of any such proceedings in the magistrate court except in cases instituted by the state, county or other political subdivision the party commencing the same shall pay to the clerk of said court such magistrate fee of five dollars (\$5.00). The fees herein provided shall be charged against the losing party, and if recovered from said party the same shall be repaid to the party making the deposit of such fee. * * *

Laws 1947, Vol. 1, page 488, provides in part as follows:

"(1) 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 in civil cases	\$0.35
For each renewal of execution in civil cases25
<u>For making certified copies on appeals or certiorari, in civil cases, for each 100 words</u>	.10
For copies of records, pleadings or instruments on file in the office of such clerks, for every 100 words and figures10

"(2) In each criminal proceeding and in each preliminary hearing instituted in any magistrate court, a magistrate court fee of two dollars and fifty cents (\$2.50) shall be allowed and collected to be in full for the services of the magistrate or the clerk of said court. Such fees shall be charged, collected and disposition thereof shall be made as provided by law applicable thereto."

(Underscoring ours)

It appears, then, that the clerk is entitled to collect a fee, in civil matters, for his work in preparing and certifying transcripts for appeal.

In regard to costs in criminal cases, this office ruled in an opinion dated June 20, 1947, addressed to Honorable Forrest Smith, then State Auditor, as follows:

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"It is, therefore, our opinion that the magistrate should not charge and collect the fee provided for in Section 8459, R.S. Mo. 1939, in addition to the \$2.50 magistrate court fee provided for in Senate Bill No. 108, enacted by the 64th General Assembly, which is now in effect, and, further, that the \$2.50 magistrate court fee shall be the only fee collected in criminal proceedings in the magistrate court for services performed by the magistrate or by the clerk of the magistrate court."

(Underscoring ours)

You next ask if the additional fee should be collected at the time the appeal is taken, i.e., in the magistrate court, or should it be collected as costs in the Circuit Court?

At this time we again call your attention to Laws of 1947, Vol. 1, page 488, supra, which provides for the collection of additional fees in Civil cases in part as follows:

"There shall be charged and collected by the clerks of the magistrate courts fees for certain of their services as follows:

* * * * *

"For making certified copies on appeals or certiorari, in civil cases for each 100 words \$0.10."

It is therefore clear that the fee should be collected from the appellant at the time the appeal is taken, by the clerk of the magistrate court.

Your final inquiry relates to the duty of the prosecuting attorney to certify fee bills (in criminal cases) sent from the magistrate court to the circuit court

Section 4237 R.S. Mo. 1939 provides as follows:

"It shall be the duty of the prosecuting attorney to strictly examine each bill of costs which shall be delivered to him, as provided in the next preceding section, for allowance against the state or county, and ascertain as far as possible whether the services have been rendered for which

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charges are made, and whether the fees charged are expressly given by law for such services, or whether greater charges are made than the law authorizes, and if said fee bill has been made out according to law, or if not, after correcting all errors therein, he shall report the same to the judge of said court, either in term or in vacation and if the same appears to be formal and correct, the judge and prosecuting attorney shall certify to the state auditor, or clerk of the county court, accordingly as the state or county is liable, the amount of costs due by the state or county on the said fee bill, and deliver the same to the clerk who made it out, to be collected without delay, and paid over to those entitled to the fees allowed."

The "next preceding section" is Section 4236 R.S. Mo. 1939, as follows:

"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."

(Underscoring ours)

In a recent case (Cramer v. Smith, 168 S.W. 2d 1039) the Supreme Court of Missouri held as follows, l.c. 1041:

"Referring to Section 4236, supra, it will be seen that it is the duty of the clerk to tax the costs and issue fee bills in criminal cases when the same 'shall have been determined or continued generally.' The verb determine 'has been variously defined, the three principal senses being to ascertain, to bound, and to terminate.' 26 C.J.S., Determine, pp. 1257, 1258. 'To put or set an end to; to bring to a close; to terminate.' (Webster's International Dict.) In Hanchett Bond Co. v. Glore, 208 Mo. App. 169, 232 S.W. 159, 160, it was said, 'The term "determination" may "properly,

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and according to legal use as well as according to its derivation, signify the coming to an end in any way whatever * * * more specifically the final result of a proceeding." 18 C.J. 983.' (Italics, the present writer's.) We hold the term 'determined' was used in Section 4236, in the sense of terminated or brought to an end, finished (26 C.J.S., Determine, p. 1259) - and this not merely insofar as the trial court might have been presently concerned, but as implying a finality. As thus construed, this provision harmonizes with the scheme of the statute for the certification, allowance and payment of criminal costs through the medium of a 'complete' fee bill. * * * "

It is clear from the above that there is no obligation on the Prosecuting Attorney to certify a fee bill until the cause has been finally determined, which is not the case in the instances you set out. The "fee bill" sent from the Magistrate Court to the Circuit Court is not really a fee bill within the meaning of Section 4236, but is in effect merely a statement of costs, which the fee bill, when made out by the Circuit Court and certified by the Prosecuting Attorney, includes.

CONCLUSION

It is, therefore, the opinion of this office that the Magistrate Clerk is entitled to an additional fee for making up and certifying the transcript in civil cases, as provided in Laws 1947, Vol. 1, page 488. Such fee should be collected by the Magistrate Clerk at the time the appeal is taken.

It is also our opinion that a Prosecuting Attorney should not certify the statement of costs sent from the Magistrate Court to the Circuit Court, but should certify the fee bill as drawn by the Circuit Clerk.

Respectfully submitted,

H. JACKSON DANIEL,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
Attorney General.