

PROSECUTING ATTORNEYS: Prosecuting attorney entitled to five dollars upon conviction of a misdemeanor  
MAGISTRATE COURTS: in magistrate court, which is to be assessed as costs against the defendant.

November 7, 1951

11-8-51

FILED  
30

Honorable Henry H. Fox, Jr.  
Prosecuting Attorney  
Jackson County  
Kansas City, Missouri

Dear Mr. Fox:

This department is in receipt of your request for an official opinion, which reads as follows:

"A large number of vehicular cases, mostly careless driving and in the misdemeanor classification, are now being filed by the sheriff's office and the state patrol.

"Some discussion has arisen among the magistrates as to the exact costs and fines that should be collected, either in the event of a plea of guilty or a trial in which the defendant is found guilty.

"We have been insisting that the court in each instance collect a prosecuting fee of \$5.00 which is turned over to the county treasurer. Will you please advise if this is in conformity with the present law."

Section 56.310, RSMo 1949, provides, in part, as follows:

"Prosecuting attorneys shall be allowed fees as follows, \* \* \* for the conviction of every defendant \* \* \* before a magistrate court, upon information, when the punishment assessed by the \* \* \* jury or magistrate shall be fine or imprisonment in the county jail, or by both such fine and imprisonment, five dollars; \* \* \*"

Honorable Henry H. Fox, Jr.

The statute is plain in its requirement that the prosecuting attorney is entitled to a fee of five dollars upon every conviction in a magistrate court.

It has long been the rule in this state that the fee of the prosecuting attorney is to be taxed as costs and paid by the defendant. State ex rel. Kemp ex inf. Hudgins v. Hannibal and St. Joseph Railroad Co., 30 Mo. App. 494; Inre Murphy, 22 Mo. App. 476.

Section 56.320, RSMo 1949, provides, in part, as follows:

"In all counties of class one in this state the salary of the prosecuting attorney in such counties shall be in lieu of all fees for criminal cases, but the fees of the prosecuting attorney shall continue to be taxed as heretofore, and, when collected, shall be turned into the treasury of said county. \* \* \*"

Jackson County is a class one county, and the above statute requires the fee of the prosecuting attorney, when collected from the defendant, to be turned into the Treasurer of Jackson County.

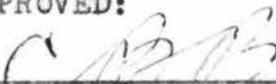
#### CONCLUSION

It is, therefore, the opinion of this department that the Prosecuting Attorney of Jackson County is entitled to a fee of five dollars when a defendant is convicted in a magistrate court of a misdemeanor and a fine or imprisonment in a county jail, or both, are assessed. This fee is to be taxed as costs against the defendant and, when collected, shall be turned into the Jackson County Treasurer.

Respectfully submitted,

ARTHUR M. O'KEEFE  
Assistant Attorney General

APPROVED:

  
\_\_\_\_\_  
J. E. TAYLOR  
Attorney General

AMO'K:ml