

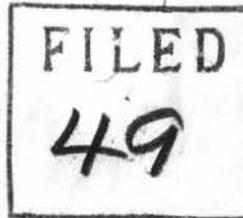
PROSECUTING ATTORNEYS:
FEES:
CHANGE OF VENUE:

Prosecuting attorney of county from
which change of venue is taken should
be remitted conviction fee.

January 4, 1951

1-12-51

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



Dear Mr. Kirkland:

Your recent letter requesting an official opinion of this department reads in part as follows:

"Upon complaint filed in the Magistrate Court of Clay County, the defendant was arraigned and preliminary hearing held on a felony charge. The defendant was bound over to the Clay County Circuit Court for trial, after which transcript and information of the prosecuting attorney of Clay County was filed in the Clay County Circuit Court charging the defendant with a felony. Subsequent to that date but prior to the date of trial, the defendant caused the case to be removed to another county for trial on change of venue. Upon trial in the county to which the change was taken, the defendant was convicted of a felony as charged; subsequently the court costs in the case were paid. Should the prosecuting attorney's conviction fee be remitted by the circuit clerk to the prosecuting attorney in the county where the case was tried and the defendant convicted or to the prosecuting attorney of Clay County who filed the original information?"

The question therefore is whether upon conviction in a case tried upon change of venue, the conviction fee shall be remitted to the prosecuting attorney of the county in which the information was filed or to the prosecuting attorney of the county in which the defendant was tried and convicted.

Hon. Robert G. Kirkland

Section 13405, R. S. Mo. 1939, provides for conviction fees as follows:

"Prosecuting attorneys shall be allowed fees as follows, unless in cases where it is otherwise directed by law: * * *
* * * * *
for the conviction of every defendant in the circuit court, upon indictment or information, or before a justice of the peace, upon information, when the punishment assessed by the court or jury or justice shall be fine or imprisonment in the county jail, or by both such fine and imprisonment, five dollars; for the conviction of every defendant in any case where the punishment assessed shall be by confinement in the penitentiary, except in cases of rape, arson, burglary, robbery, forgery or counterfeiting, ten dollars; for the conviction of every defendant of homicide, other than capital, or for offenses excepted in the last clause, twelve dollars and fifty cents; for the conviction of every defendant in a capital case, twenty-five dollars; * * * * *"

Among the duties of a prosecuting attorney provided for by Section 12942, R. S. Mo. 1939, is the following:

"The prosecuting attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned, * * * * * and in all cases, civil and criminal, in which changes of venue may be granted, it shall be his duty to follow and prosecute or defend, as the case may be, all said causes, for which, in addition to the fees now allowed by law, he shall receive his actual expenses. * * * * *"

In view of the above statutes we are of the opinion that since the prosecuting attorney of the county in which the information is filed and from which a change of venue is taken has the duty to follow and prosecute the cause, the conviction fee provided for by Section 13405, supra, should be remitted to such prosecuting attorney.

Hon. Robert G. Kirkland

CONCLUSION

It is therefore the opinion of this department that the prosecuting attorney of the county in which the information is filed in a criminal cause and from which a change of venue is taken should, upon conviction, be remitted the conviction fee provided for by Section 13405, R. S. Mo. 1939.

Respectfully submitted

RICHARD H. VOSS
Assistant Attorney General

APPROVED:



J. E. TAYLOR
ATTORNEY GENERAL

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