

FEEES: Prosecuting attorney's fee in this case is
MAGISTRATE COURT: \$5.00; the fee of the magistrate's clerk is
PROSECUTING ATTORNEY: \$2.50 and sheriff receives nothing.
MAGISTRATE CLERK AND
SHERIFF:

February 18, 1952



2-19-52

Honorable John E. Downs
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

Dear Mr. Downs:

We have before us your letter containing a request for an opinion which has been assigned to me for answer. The pertinent part of your letter is as follows:

"Assuming that no warrant has been issued-- pursuant to Section 545.310--by reason of the fact that the defendant was either in custody, or voluntarily surrendered himself to the custody of the court, and that the Sheriff was not present at the time of hearing, and that the defendant was found guilty of a misdemeanor in the Magistrate's Court, what costs should be allowed?"

Section 56.310 RSMo 1949, reads in part as follows:

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

We are of the opinion that the aforesaid quoted part of this section of the statute is pertinent with regard to the taxing of the fee of \$5.00 to the prosecuting attorney and should be made a part of the costs in the action inquired about in your letter.

Section 483.610, RSMo 1949, of which the part pertaining to

Hon. John E. Downs

your question reads as follows:

"(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 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."

It is our opinion that the above quoted section of this statute allows the charge of \$2.50 as the costs in the case set out in your opinion request to be charged. Of course you refer to it as \$2.50 to the state but actually it is the magistrate or clerk's fee in the magistrate court. Under the circumstances set forth in your letter we are of the opinion that the sheriff is entitled to no fee whatsoever.

CONCLUSION

It is therefore the opinion of this department that the prosecuting attorney's fee in this case is \$5.00; the fee of the magistrate's clerk is \$2.50 and that the sheriff receives nothing where no warrant was issued and the sheriff was not in attendance and defendant was found guilty of a misdemeanor.

Respectfully submitted,

A. BERTRAM ELAM
Assistant Attorney General

APPROVED:


J. E. TAYLOR
Attorney General

ABE:mw