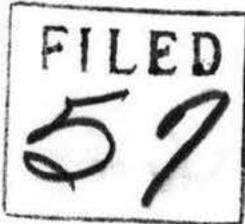


MAGISTRATE COURT COSTS:
CRIMINAL CASES COLLECTIBLE
FROM THE COUNTY COURT IN
CERTAIN INSTANCES:

Magistrate fee in magistrate cases an information filed by prosecuting attorney where fine and costs are assessed against defendants of \$2.50 allowed under Section 483.610, RSMo, 1949, is proper charge. \$2.50 is proper charge to be collected from the county court on cost bill submitted under Section 550.030, RSMo, 1949. \$2.50 cost collected in these criminal matters should be collected by magistrate and accounted for by him to the persons and in the ways mentioned in Section 483.615, RSMo, 1949.



September 4, 1952

9-5-52

Honorable Aubrey R. Marshall
Probate and Magistrate Judge
Moberly, Missouri

Dear Sir:

Upon reassignment your request has come to me for an opinion. Your request is stated as follows:

"On information filed by the Prosecuting Attorney when the defendant is fined, say \$25.00 and costs and cannot pay the fine he is committed to jail, serving full time;

"And in case where defendant is sentenced to a certain number of days in jail and serves full time -

"In each case the Magistrate Fee is \$2.50, which heretofore this court has collected from the County Court on cost bill submitted. Is this \$2.50 a proper charge against the County, or may this item be omitted from the fee bill submitted to the County?"

Section 483.610, RSMo, 1949, reads, in part, 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

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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 part of the statute allows you to collect the \$2.50 for services in full of the magistrate and clerk in each criminal proceeding.

Section 550.030, RSMo, 1949, reads 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."

This statute allows you to tax against and collect from the county upon proper cost bill the \$2.50 mentioned heretofore, the same to be paid by the county court in the cases mentioned in your request. This should be done, and the amount collected by you, as the same has to be accounted for under Section 483.615, RSMo, 1949, which section provides as follows:

" * * * *

"2. Except as provided in section 483.620, it shall be the duty of each clerk of the magistrate court, with the approval of the magistrate to charge upon behalf of the state every fee that accrues in his office and to receive the same, and at the end of each month, pay over to the director of revenue all moneys collected by him as fees, taking two receipts therefor, one of which he shall immediately file with the state treasurer and shall at the end of each month make out an itemized and accurate list of all fees collected by him, or by the magistrate, giving the name of the person or persons paying the same, and turn the same over to the director of revenue, said report to be verified by affidavit.

"3. On or before the thirty-first day of January of each year the clerk of the magistrate court shall file a verified report with the director of revenue showing all fees due and unpaid in his office in cases

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where the liability therefor has been finally determined and established during the preceding year, showing the name of the person or persons owing same and stating that he has been unable, after the exercise of diligence, to collect the same. The director of revenue shall collect such unpaid fees and shall have the same rights in connection with the judgment therefor as the prevailing party in the litigation.

"4. All magistrate fees received by the director of revenue shall be deposited by him with the state treasurer in a special fund to be denominated 'magistrate fund', and all moneys in said fund shall be used exclusively for the payment of salaries of magistrates, their clerks, deputies and employees and for the payment of the cost of any surety bonds furnished by a clerk or deputy clerk; provided, however, that such salaries may also be paid from the general revenue of the state whenever either the balance in the magistrate fund or the appropriation from such fund is insufficient to pay such salaries."

Our opinion is that the above quoted sections of this statute make it imperative that you pay over to the persons named therein, in the ways stated, all \$2.50 fees collected by virtue of Section 550.030, supra. As you see, the fees collected from the county in these matters are not payable by you back into the county treasury.

CONCLUSION

It is therefore the opinion of this department that:

(1.) In magistrate cases an information filed by the prosecuting attorney where the defendant is fined and assessed costs; cannot pay same and is committed to jail, the magistrate's fee of \$2.50 provided for under Section 483.610, supra, is a proper charge.

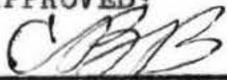
(2.) The \$2.50 mentioned in (1) above is a proper charge to be collected from the county court on cost bill submitted under Section 550.030, RSMo, 1949.

(3.) The \$2.50 costs collected in criminal matters by the magistrate should be accounted for by him to the persons and in the ways mentioned in Section 483.615, RSMo, 1949.

Respectfully submitted,

A. BERTRAM ELAM
Assistant Attorney General

APPROVED:


J. E. TAYLOR
Attorney General