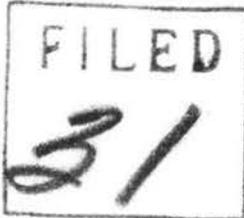


MAGISTRATE FEE:

Magistrate fee in criminal case allowed for each proceeding, and not for each defendant.

April 1, 1953



Honorable J. Arthur Francis  
Judge of Probate and Magistrate Court  
Iron County  
Ironton, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"I would be pleased to have your opinion on Sec. 483.610, clerk's fees in the Magistrate Court, as to whether or not the Magistrate Court is entitled to only one fee of \$2.50 in a criminal proceeding and in each preliminary hearing instituted in the Magistrate Court, under paragraph 2 of said section where there are two or more defendants in a joint information or complaint.

"The question is, are we supposed to charge only \$2.50 on each criminal proceeding, or shall we charge \$2.50 for each defendant named in said criminal proceeding?"

The provision of Section 483.610, RSMo, 1949, about which you inquire, reads as follows:

" \* \* \* \* "

"2. In each criminal proceeding and in each preliminary hearing instituted

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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.

" \* \* \* ."

In the case of In the Matter of Murphy and Spillane, 22 Mo. App. 476, the St. Louis Court of Appeals considered the question of whether or not the prosecuting attorney was entitled to a single fee or a fee in respect of each defendant, in a case where two defendants had been proceeded against jointly in a single information. The Court in that case stated at 22 Mo. App., l.c. 477:

"The question in the narrowest form of statement is, whether the word 'conviction' in the above clause is to be interpreted as meaning a judgment, in favor of the state, in a criminal case, upon the merits, irrespective of the number of defendants against whom it is jointly rendered, or such a judgment in its operation against each of several defendants, rendered upon a single information, and after a single trial.

"I am of opinion that the former is the correct view of the meaning of the statute. \* \* \*!"

The Court further stated at 22 Mo. App., l.c. 479:

" \* \* \* The question clearly appears to be whether there was more than one prosecution, one trial, one verdict, one judgment. If there was, then the prosecuting attorney is entitled to a separate fee in each case; if there was not, then he is entitled to but one fee."

The Court also stated at 22 Mo. App., l.c. 480:

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" \* \* \* But the statute contemplates the payment of fees for actual services only. The payment of fees beyond this is illegal and is to be discountenanced. An officer who makes a journey to serve a writ upon two defendants at the same place is entitled to mileage in but one case, unless the statute provides otherwise, because he has performed but one journey. A clerk of a court of record, who enters a judgment against several defendants is entitled to but one fee, because he has performed but one act of service. So, in this case, the prosecuting attorney has performed but one act of service. He has drawn but one information and has represented the state at but one trial, which has resulted in but one judgment or conviction. He has rendered substantially the same service which he would have rendered if the information had been filed against one of the defendants, and a trial had taken place thereon, resulting in a conviction. Any reasoning, which entitles him to a duplication of his fee, would entitle the jury to double fees for serving at the trial, and the justice to a double fee for entering the judgment. The case can not be one case for every purpose except that of the fees of the officers, and two cases for that." (First Emphasis Ours.)

The statute involved in your question provides for the fee for "each criminal proceeding." As the Court in the above case pointed out, when there is a single information, there is only a single proceeding, regardless of the number of defendants. We think that the holding of the Court in this case is applicable in the present situation.

We might point out that following the decision in the Murphy and Spillane case, the statute providing for the fees of the prosecuting attorney was amended (Laws of Mo., 1887, p. 188) to provide that his fee should be "for the conviction of every defendant", as is now provided by Section 56.310, RSMo, 1949. However, the statutory provision for the fee here in question is not so prescribed.

#### CONCLUSION

Therefore, it is the opinion of this department that under Section 483.610 (2), RSMo, 1949, the magistrate court

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fee of \$2.50 allowed in each criminal proceeding, and in each preliminary hearing, is to be charged for each such proceeding, and any such proceeding in which two or more persons are charged jointly, is but a single proceeding under said section.

This opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON  
Attorney General

RRW:lw