

COSTS: When a complainant filed an affidavit charging a felony, and a warrant was issued and the defendant was arrested, but before a preliminary examination was held complainant dismissed the charge, the magistrate before whom the proceeding was instituted was entitled to a fee of \$2.50; that the arresting officer making the arrest was entitled to a fee of \$1.00; that if the sheriff rendered any other compensable services, these are costs, and that if witnesses had been subpoenaed the cost thereof would also accrue.



September 24, 1953

Honorable Donald P. Thomasson
Prosecuting Attorney
Bollinger County
Marble Hill, Missouri

Dear Mr. Thomasson:

This department is in receipt of your recent request for an official opinion. You thus state your request:

"I would appreciate an opinion on the following question: When a complainant files an affidavit under oath charging a felony and a warrant is issued and the defendant is arrested, and before a preliminary examination is had complainant dismisses the charge, who, if anyone, is entitled to fees for costs?"

We here direct attention to paragraph 2 of Section 483.610, RSMo 1949, which 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."

In the situation which you present a preliminary hearing was "instituted" by a complainant filing an affidavit charging a felony in the Magistrate Court. Upon the basis of this affidavit a warrant for arrest was issued by the

Honorable Donald P. Thomasson

Magistrate Court, and therefore, the charge of \$2.50, as provided above, accrued, even though the claimant dismissed his charge before a preliminary hearing could be held. Therefore, the Magistrate would be entitled to a fee of \$2.50.

Section 57.290, RSMo 1949, states, in part:

"Sheriffs, county marshals or other officers shall be allowed fees for their services in criminal cases and for all proceedings for contempt or attachment as follows:

"For serving and returning each capias, for each defendant. . . \$1.00.
* * *

Therefore, in the situation which you present, the arresting officer would be entitled to a fee of \$1.00 for making the arrest.

So far as it appears from your letter the above was all that was done. If the Sheriff has rendered any other services in the matter which are, by statute, compensable, including mileage, these are costs. If witnesses have been subpoenaed before the charge is dismissed the cost therefor would, of course, accrue.

CONCLUSION

It is the opinion of this department that when a complainant filed an affidavit charging a felony, and a warrant was issued and the defendant was arrested, but before a preliminary examination was held complainant dismissed the charge, the Magistrate before whom the proceeding was instituted was entitled to a fee of \$2.50; that the arresting officer making the arrest was entitled to a fee of \$1.00; that if the Sheriff rendered any other compensable services, these are costs, and that if witnesses had been subpoenaed the cost thereof would also accrue.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General