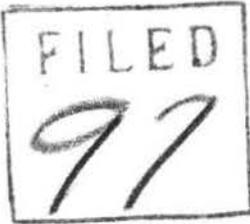


CITIES, TOWNS and VILLAGES: Cities of fourth class not required
CIVIL PROCEDURE: to pay filing fee in magistrate court
MAGISTRATES: but must furnish bonds in attachment
suits.



April 21, 1953

Honorable Homer F. Williams
Prosecuting Attorney
Bollinger County
Marble Hill, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department, reading as follows:

"I would appreciate an opinion on the following question: Are fourth class cities required to pay a filing fee and furnish bond in attachment suits in the Magistrate Court?"

The first question presented is the necessity for the payment of the filing fee. In this regard your attention is directed to the following portion of Section 483.615, RSMo 1949:

"483.615. 1. A fee of five dollars shall be allowed the magistrate in each civil proceeding, general or special, instituted in his court. Upon the commencement of any such proceedings in the magistrate court except in cases instituted by the state, county or other political subdivision the party commencing the same shall pay to the clerk of said court such magistrate fee of five dollars. * * * "

(Emphasis ours.)

That a city is a "political subdivision" as that phrase is used in the quoted statute appears from Mitchell v. Bank of Ava, 65 S.W. 2d 97, l.c. 99, from which we quote:

Honorable Homer P. Williams

"Is a city of the third class a political subdivision? A standard work on municipal corporations so defines it in the following language: 'A municipal corporation, in its strict and proper sense is a body politic and corporate constituted by the inhabitants of a city or town for the purposes of local government thereof. Municipal corporations as they exist in this country are bodies politic and corporate of the general character above described, established by law as an agency of the State to assist in civil government of the country, but chiefly to regulate and administer the local or internal affairs of the city, town or district which is incorporated.' Dillon (5th Ed.) Vol. I, Sec. 31. (Italics curs.)

"Section 47 of article 4 of the original Constitution, prohibiting the lending of credit, refers to counties, cities, towns, or townships as 'political corporations or subdivisions of the State.' (Italics curs.)"

Therefore, under the expressed provisions of the quoted portion of the statute mentioned supra, a city of the fourth class is not required to pay the filing fee of five dollars as a condition precedent to the institution of an action in the magistrate court.

Your second question relates to the necessity of such cities being required to furnish a bond in attachment suits filed in the magistrate court.

In this regard your attention is directed to Section 521.660, RSMo 1949, reading as follows:

"521.660. The provisions of law governing attachments in circuit courts shall apply to attachments in magistrate courts so far as the same may not be inconsistent with

Honorable Homer P. Williams

the provisions which are specially applicable to magistrate courts. Real estate may not be attached under an attachment issued in magistrate court."

Also, to the provisions of Section 521.050, RSMo 1949, from which we quote:

"521.050. Any plaintiff wishing to sue by attachment may file in the clerk's office of the court in which the attachment is instituted, or with the magistrate before whom the suit is brought, a petition or other lawful statement or exhibit of his cause of action, and except in suits instituted by the state or a county in its own behalf, and also, except in cases where the defendant is not a resident of the state of Missouri, in either of which cases no bond shall be required, shall also file an affidavit and bond, * * * "

(Emphasis ours.)

You will note that the latter statute expressly exempts the state and counties from furnishing attachment bonds. Cities and other political subdivisions have not been included within the exemption specifically made, nor can the purview of the statute be extended by implication.

Therefore, since such exemption does not prevail, it will be necessary that a city of the fourth class furnish an attachment bond upon bringing an attachment suit in the magistrate court.

CONCLUSION

In the premises, we are of the opinion:

(1) A city of the fourth class is not required to pay the filing fee of five dollars in the magistrate court upon the filing of an action on behalf of such city in said court; and

(2) That a city of the fourth class must furnish an attachment bond in actions of that nature instituted on behalf

Honorable Homer F. Williams

of such city in magistrate court.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

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