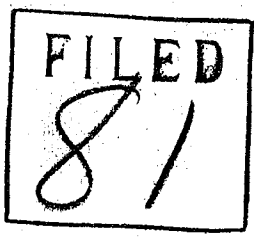
CIRCUIT CLERKS: Change of venue fee paid in to the county treasury under Section
FEES: 508.230, RSMo 1949.



April 30, 1954

Honorable D. W. Sherman, Jr.
Prosecuting Attorney
Lafayette County
Lexington, Missouri

Dear Sir:

We have received your request for an opinion of this office, which request reads as follows:

> "Mr. O. H. Henning, Clerk of the Circuit Court, Lafayette County, Missouri has asked, and I request your opinion to the following, to-wit:
>
> > What disposition should be made of the $10.00 filing application fee, paid to the clerk on a change of venue civil case?
> >
> > Should said fee be paid to the State, i.e., should the clerk of said court, after the disposition of the change of venue case, send the aforesaid amount to the Office of Comptroller, Department of Revenue, State of Missouri, or should amount be paid to the County Treasurer in the same manner as other fees of the court.
>
> "We have in our possession your opinion dated December 5, 1946, directed to Forrest Smith, State Auditor, which said in substance that since said sum is a fee of the Circuit Judge it should be paid to the State Treasury; however since said date,

to-wit; in 1949 House Bill 2118 now known as section 508.230 of the Missouri Revised Statutes of 1949 would seem to require that money be paid into the County Treasury as would other fees of the jury and court reporter, for this section does not refer to this fee as the judge's fee as did the statute prior to its amendment in 1949."

Section 508.220, RSMo 1949, provides:

"Whenever any change of venue is applied for in any civil cause from any circuit court of any county, or city constituting a county, to any other county or such city, in another circuit, the party or person applying for such a change of venue shall, with his application, deposit with the clerk of the circuit court the sum of ten dollars; and thereupon, if such change of venue is awarded, the clerk of said court shall transmit said sum of ten dollars, together with the transcript and proceedings in the cause, to the clerk of the court to which the removal is ordered; and no transcript shall be transmitted or received by any clerk on such change of venue, as aforesaid, unless said sum of ten dollars shall accompany such transcript; provided, however, that whenever any cause shall be transferred to another circuit by agreement of parties, such sum shall be paid by both parties, before any change of venue is awarded, in equal shares and transmitted as aforesaid."

Section 508.230, RSMo 1949, provides:

"1. Said sum when received shall be paid into the county treasury in the same manner as other fees of the clerk of the court except that in any case in which a special judge presides, said ten dollar fee shall be paid to such special judge after a trial had or upon the final disposition of the cause in the court.

> "2. All moneys received by the clerk of the circuit court of the city of St. Louis under and by virtue of the provisions of this and section 508.220, shall be paid by him into the city treasury, and used for the payment of the salaries of the circuit judges and court stenographers of said city.
>
> "3. If no change of venue is granted, the money paid under this and section 508.220 shall be returned to the party or parties paying the same."

In view of the provision of Section 508.230, above quoted, which requires that the fee be paid into the county treasury, the question involved is whether or not this provision is constitutional. If it is, it, of course, governs the disposition to be made of the fee. The constitutional provision involved is found in Section 24, Article V of the Missouri Constitution of 1945. That section deals with the salaries and compensation of judges, and contains the following provision: "The fee of all courts, judges and magistrates shall be paid monthly into the state treasury or to the county paying their salaries."

In the opinion of this office dated December 5, 1946, to which you refer in your opinion request, it was concluded that the fee under the statute as it then stood (Sec. 1074, R.S. Mo. 1939) was a fee of the court and that its disposition was governed by the constitutional provision referred to from and after the effective date of the 1945 Constitution. At that time the section read as follows:

> "The clerk of any circuit court receiving with any transcript said sum of ten dollars shall pay said sum to the judge of the circuit court, or to any special judge trying such case, after a trial had or upon the final disposition of such cause in said court: Provided, that if no change of venue is granted, the money paid under this and the preceding section shall be returned to the party or parties paying the same; Provided, however, that all moneys received by the clerk of the circuit court of the city of St. Louis, under and by virtue of the provisions of this and the preceding

> section, shall be paid by him into the city treasury, and used for the payment of the salaries of the circuit judges and court stenographers of the said city."

The statute was revised by the 1949 Legislature in view of the constitutional provision above referred to.

A fundamental rule of constitutional law is that an act of the Legislature is presumed to be constitutional and will be so declared by the courts unless it is plainly shown to violate the Constitution. Insofar as Section 508.230 is concerned, it appears to us that the Legislature by its amendment of this section in 1949 removed this $10.00 fee from the status of a fee of the court or judge. It will be noted that that section requires a sum to be paid into the county treasury "in the same manner as other fees of the clerk of the court." By reference to the fee in this manner it appears that the Legislature intended that by its amendment the fee should be classified as a fee of the clerk rather than a fee of the court or judge. Inasmuch as this fee is purely a creature of the Legislature, there appears to be no inherent reason why the Legislature should not determine the nature of the fee. In view of the presumption of validity above referred to, we cannot state that the Legislature's determination regarding the disposition of the fee is contrary to Section 24 of Article V of the Missouri Constitution, 1945, and therefore the fee should be disposed of as required by Section 508.230, RSMo 1949.

The foregoing relates only to the situation when a special judge does not preside. Inasmuch as your inquiry relates to the clerk's disposition of the fee as between the county and state, we do not pass upon the situation when a special judge presides.

CONCLUSION

Therefore, it is the opinion of this office that the change of venue fee of $10.00 required to be paid under Section 508.220, RSMo 1949, should, in cases in which a special judge does not preside, be disposed of by the clerk of the circuit court in the manner prescribed by Section 508.230, RSMo 1949, by payment into the county treasury rather than to the State of Missouri.

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

Yours very truly,

JOHN M. DALTON
Attorney General

RRW:ml