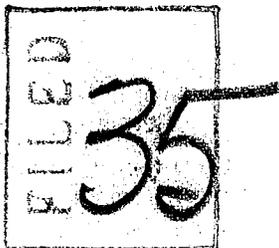


COSTS: Costs assessable on a plea of guilty
CRIMINAL COSTS:
MAGISTRATE COURT: to a misdemeanor in the magistrate court.
SHERIFFS:
PROSECUTING ATTORNEYS:



*Magistrate fee \$5.00
instead of \$7.50.*

April 21, 1955

Honorable J. W. Grossenheider
Prosecuting Attorney
Laclede County
Lebanon, Missouri

Dear Mr. Grossenheider:

This is in response to your request for an opinion dated March 14, 1955, which reads as follows:

"I would like to request an opinion from your office as to the proper criminal costs to be charged by Magistrate Court on a plea of guilty to a misdemeanor.

"Our Magistrate now charges as costs \$9.50 and I believe that he is correct. Many magistrates in this area charge as costs only \$8.50 and since this should be uniform, we are requesting this opinion.

"Section 56.310 provides a \$5.00 prosecuting attorney fee; Section 483.610 provides a \$2.50 magistrate fee and Section 57.290 provides a \$1.00 sheriff's fee for the capias or warrant and also a \$1.00 fee for the sheriff for trial and confession.

"Some of the magistrates in the adjoining counties have not been charging the last fee that I mentioned and we would appreciate an opinion from your department as to the exact costs which a magistrate must assess on a plea of guilty to a misdemeanor."

Section 56.310, RSMo 1949, provides, in part, as follows:

"Prosecuting attorneys shall be allowed fees as follows, unless in cases where it is otherwise directed by law: * * * for

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the conviction of every defendant in the circuit court, upon indictment or information, or before a magistrate court, upon information, when the punishment assessed by the court or jury or magistrate shall be fine or imprisonment in the county jail, or by both such fine and imprisonment, five dollars; * * *

Section 57.290, MoRS, Cum. Supp. 1953, reads, in part:

"1. 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

* * * *

For every trial in a criminal
case or confession 1.00

* * * *

"5. These costs shall be taxed as other costs in criminal procedure immediately after conviction of any defendant in any criminal procedure. * * *

Section 483.610, RSMo 1949, reads, in part:

"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."

This office held in an opinion issued to Honorable A. L. Wright, Prosecuting Attorney of Stone County, under date of January 3, 1951, copy enclosed, that when the sheriff takes a

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prisoner before a magistrate court for trial or plea of guilty such does not count as a day's attendance upon such court so as to entitle him to the \$3.00 fee provided in Section 57.290, supra. However, it was also held therein that the sheriff is entitled to collect the \$1.00 fee for confession.

It was also held by this office in an opinion rendered to Honorable John E. Downs, Prosecuting Attorney of Buchanan County, under date of February 18, 1952, copy enclosed, that if no warrant was issued and the sheriff was not in attendance at the trial or confession he was not entitled to any fees and the only costs would be the prosecuting attorney's fee and the magistrate's fee. The prosecuting attorney's fee is assessable, however, even though he is not present when the plea of guilty is received (opinion of Attorney General to Henry H. Fox, Jr., November 7, 1951; opinion of Attorney General to E. C. Westhouse, May 19, 1953, copies of each enclosed).

Therefore, the costs would be as follows:

The prosecuting attorney's fee	\$5.00
Magistrate's fee	2.50
Sheriff's fee, if warrant is issued and served by him	1.00
Sheriff's fee, if he is in attendance when the plea of guilty is received	1.00
	<u>\$9.50.</u>

Other costs can accrue, of course, even on a plea of guilty, but we have considered only the ones apparently in question here.

CONCLUSION

It is the opinion of this office that the basic costs on a plea of guilty to a misdemeanor in a magistrate court are as follows:

The prosecuting attorney's fee	\$5.00
Magistrate's fee	2.50
Sheriff's fee, if warrant is issued and served by him	1.00
Sheriff's fee, if he is in attendance when the plea of guilty is received	1.00
	<u>\$9.50.</u>

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General

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