

COSTS: :The change of venue fee required by Section  
VENUE: :508.220, RSMo 1949, should not be returned  
DEPOSIT: :to the county where the case originated,  
COURTS: :upon return of the case, by stipulation of  
CIRCUIT CLERK::the parties, to the county of origin.  
FEES: .....



April 21, 1955

Honorable Rufe Scott  
Prosecuting Attorney  
Stone County  
Galena, Missouri

Dear Mr. Scott:

Your letter of April 11, 1955, requesting an opinion of this office is as follows:

"Our Circuit Clerk has asked me to advise him as to the disposition he should make of the \$10. change of venue fees received in change of venue cases from other counties. And there seems to be a conflict between the Statute and the State Constitution as to such fees, I am therefore asking your good advice in the matter.

"Section 508.230 R.S. 1949, which requires such fees paid into the County Treasury, and Section 24 of Article 5, of the Constitution of Missouri, which seems to require such fees paid into the State Treasury.

"Please advise me as to what disposition the Clerk should make of such fees. Also as to whether or not such fees should be returned in the event the case is returned to the county from which it came, on stipulation of the parties to the action and before any action taken by the court?"

This office rendered an opinion on April 30, 1954, to Honorable D. W. Sherman, Jr., Prosecuting Attorney of Lafayette County, holding that such fee should be paid into the county treasury. A copy of that opinion is enclosed.

Honorable Rufe Scott:

We turn to your second question, which asks if such fee should be returned, upon return of the case to the county whence it came.

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

Honorable Rufe Scott:

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."

There is no statutory provision for return of the fee to the county where the case originated. The provisions of Sections 508.220 and 508.230, supra, indicate that the ten dollars is not in the nature of a filing fee or deposit to partially secure the costs of the case, but is instead, a flat fee which the Circuit Clerk of the receiving county is entitled to receive, on behalf of his county, upon the transmission of the case. Since the fee unconditionally accrues to the benefit of the receiving county upon transfer of the case, and there is no statutory authorization for the return of the fee upon a subsequent return of the case, by stipulation of the parties, to the county of origin, we conclude that the Circuit Clerk of the receiving county should retain the fee, and pay said fee into the county treasury of his county.

#### CONCLUSION

It is, therefore, the opinion of this office that the change of venue fee required by Section 508.220, RSMo 1949, should not be returned to the county where the case originated, upon return of the case, by stipulation of the parties, to the county of origin.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON  
Attorney General

Enc:

PMcG:irk