

MAGISTRATE COURTS: The court is authorized to require
COSTS: a reasonable deposit or security
for costs.

January 27, 1956



Honorable J. Marcus Kirtley
County Counselor
Suite 202 Court House
Kansas City, Missouri

Dear Mr. Kirtley:

Your recent request for an opinion from this office was stated as follows:

"It has been called to the attention of the County Court of Jackson County that considerable revenue is being lost through non-payment of Constable's costs in the Magistrate Courts. The suggestion has been made that plaintiff be required, at the time of filing suit, to advance and pay to the Clerk of the Magistrate Court the mileage that will be entailed in the service of the summons.

"I would appreciate your opinion as to whether such procedure is authorized."

Our comments will be directed as much to all costs as to the specific fees for mileage. There is no section of the statutes that specifically authorizes a court to require an advance on court costs or security for them in every case. However, neither do we find one that precludes the court from making such a requirement.

You will note that Section 514.010, RSMo 1949, lists the specific instances in which security for costs or deposits might be required before commencing suit. This requirement is discretionary with the judge. See *Carrier v. Missouri Pacific Railroad*, 175 Mo. 470, 74 S. W. 1002. It does not preclude a reasonable security for costs or a deposit in other cases.

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In ordinary actions each party litigant is primarily responsible for the costs he incurs. See Chilton v. Drainage District No. 8 Pemiscot County, 228 Mo. App. 4, 63 S.W. (2d) 421.

The intimation is left in some cases that the plaintiff may be required to advance the costs. See Crook v. Tull, 111 Mo. 283, 20 S.W. 8.

In view of the fact that we are convinced that the judges have the inherent power to manage and run their own affairs within their respective courts, we believe that they may require a reasonable deposit or a reasonable security for court costs.

The magistrate courts, in this respect, have the same authority as do the circuit courts. It is common knowledge that many circuit courts do make such requirement. As far as can be learned, the circuit courts that make the requirement rely only upon Section 514.020 and their inherent power to control the affairs of their court. It is contended by some that if 514.020 permits the court to require the deposit, upon motion, after suit is commenced, little objection can be found against dispensing with the technical requirement of the motion, and with demanding a deposit before suit is commenced.

CONCLUSION

It is, therefore, the opinion of this office that Section 514.020, RSMo 1949, and the inherent power of the court, are sufficient to authorize a magistrate court to require a reasonable deposit or security for court costs prior to the commencement of a suit.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Russell S. Noblet.

Very truly yours

John M. Dalton
Attorney General