

SALARIES AND FEE:
MAGISTRATE FEE:
MAGISTRATE COURT FEE:
FIRST CLASS COUNTIES:
WHEN COLLECTABLE:

1. Sec. 66.110, RSMo 1959, providing for a fee of two dollars and fifty cents in each case involving violation of a county ordinance, is applicable to St. Louis County magistrate courts. Said fee shall be collected in each county ordinance case instituted in any magistrate court of such county. 2. Sec. 483.610, RSMo 1959, providing for collection of five dollar magistrate court fee in each criminal proceeding and in each preliminary hearing instituted in any magistrate court, is applicable to St. Louis County magistrate courts. Said fee shall be collected only in each criminal case instituted in a magistrate court of said county. 3. Sec. 482.250 RSMo Cum. Supp. 1961, applies in cases other than criminal proceedings and cases involving county ordinances. The fee provided for in the section is collected by magistrate courts of St. Louis County only in such cases.

April 4, 1962



Honorable Norman H. Anderson
Prosecuting Attorney of
St. Louis County
Court House
Clayton, Missouri

OPINION NO. 31(62) 398 (61)

Dear Mr. Anderson:

This office is in receipt of your request for a legal opinion, which reads as follows:

"This office has been requested by the various Magistrates in St. Louis County to seek an opinion from your office relating to the following: under Section 482.250 of the Revised Statutes of Missouri which became effective this year, there is contained therein a statement as follows: 'for such Courts the Magistrate fee shall be \$6.00.'

There is nothing in the above section which negates or voids any of the other sections of the statutes dealing with various fees to be charged in the Magistrate Courts, such sections setting out specific fees for State criminal cases and County cases. As the Magistrates are all concerned as to the fees they should be charging at the present time, your prompt

opinion on this matter would be greatly appreciated by all."

Section 482.250, RSMo Cum. Supp. 1961, provides as follows:

"The salaries of magistrates and clerks of the magistrate court, lying wholly within any city of more than six hundred thousand inhabitants or any county of the first class, shall be fixed and paid as provided by general law for other magistrates and clerks, except that the annual salary of each magistrate shall be nine thousand eight hundred dollars. For such courts the magistrate fee shall be six dollars."

St. Louis County is one of the first-class and has adopted its own county charter, under provisions of Section 18, Article VI, Constitution of Missouri.

We understand the "County Cases" referred to in the opinion request are prosecutions for violation of St. Louis County ordinances, authorized by Chapter 66, RSMo 1959, and particularly Section 66.010, of said Chapter, providing such cases may be prosecuted in magistrate courts. The section reads as follows:

"Any county of class one framing and adopting a charter for its own government under the provisions of section 18, article VI of the constitution of this State, may prosecute and punish violations of its county ordinances in the magistrate courts of such counties in the manner and to the extent herein provided."

Section 66.110 provides what fee shall be allowed and collected in county ordinance violation cases, and reads as follows:

"In each such proceeding had before a magistrate court involving a violation

of a county ordinance a fee of two dollars and fifty cents shall be allowed and collected to be in full for the service of the magistrate or the clerk of the magistrate court. All such fees charged and collected by the clerk of the magistrate court shall be paid over to him at the end of each month to the director of revenue as provided in section 483.615, RSMo."

Section 66.110, supra, is a special, as distinguished from a general statute, for the reason it applies only to the magistrate courts of first class counties with charter forms of government. It requires the allowance and collection of a fee of two dollars and fifty cents in each county ordinance case, which is a special proceeding, and does not authorize the allowance and collection of a fee in this amount in any other proceeding in the magistrate courts of such counties.

Section 482.250, supra, is a general statute applicable to magistrate courts of cities of more than six hundred thousand inhabitants and magistrate courts of all counties of the first class. When Section 66.110 is compared with Section 482.250, it appears that the former is a special statute while the latter is general, as it is fully applicable to magistrate courts of all first class counties, including those of St. Louis County. Therefore, in cases violating prosecutions in magistrate courts in St. Louis County for violation of county ordinances a fee of two dollars and fifty cents is allowed and collected for the services of the magistrate or the clerk.

In seeking to determine the kind or class of cases Section 482.250 requires a magistrate fee to be charged for and collected, we find it necessary to refer to and consider other statutes relating to the collection of fees in criminal proceedings in magistrate courts.

Section 483.610, RSMo 1959, provides that certain fees shall be charged for and collected in magistrate courts in criminal proceedings. The only fees mentioned in the section with which we are concerned, are those set out in subsections 2 and 3, which subsections read as follows:

2. "In each criminal proceeding and in each preliminary hearing instituted in any magistrate court, a magistrate court fee of five dollars 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."

3. "All such fees shall be charged on behalf of the state or county paying salary of such clerk or magistrate and shall be paid and accounted for in the same manner as magistrate fees."

Obviously, the language used in Section 483.610, supra, is sufficiently broad enough to include magistrate courts within first class counties, as subsection 2 provides that in each criminal proceeding and in each preliminary hearing instituted in "any magistrate court, a magistrate court fee of five dollars shall be allowed and collected to be in full for the services of the magistrate or the clerk of said court." It is believed the section refers to every magistrate court, including those of first class counties.

Subsection 2 of section 483.610 refers to a "magistrate court fee", while subsection 3 requires all such fees (including "magistrate court fees" as well as other fees referred to in an earlier part of the section) to be paid and accounted for in the same manner as "magistrate fees", thereby creating a distinction between "magistrate court fees" and "magistrate fees" and that said fees each have a different meaning and the terms cannot be used interchangeably.

In view of the foregoing, it is our thought that Section 483.610, supra, is applicable to the magistrate courts of St. Louis County, and requires a magistrate court fee of five dollars to be allowed, collected and accounted for in each criminal proceeding and each preliminary hearing filed in such magistrate courts.

The magistrate court fee is collectable in each criminal case, and not in a civil case, whereas, a magistrate fee is collectable in a civil case and not in a criminal case.

Therefore, in view of the foregoing, it is believed Section 482.250 applies to cases other than criminal proceedings and cases involving prosecutions for violations of county ordinances and that St. Louis County magistrate courts shall collect the six dollar magistrate fee provided for in such section only in such cases filed in such courts.

Conclusion

Therefore, it is the opinion of this office that:

1. Section 66.110, RSMo 1959, providing for a fee of two dollars and fifty cents in each case involving the violation of a county ordinance is applicable to St. Louis County magistrate courts, and said fee shall be collected in each county ordinance case instituted in any magistrate court of said county.

2. Section 483.610, RSMo 1959, providing for the collection of a five dollar magistrate court fee in each criminal proceeding and in each preliminary hearing instituted in any magistrate court is applicable to the magistrate courts of St. Louis County and said fee shall be collected only in each criminal case instituted in a magistrate court of said county.

3. Section 482.250, RSMo Cum. Supp. 1961, applies in cases other than criminal proceedings and cases involving prosecution for violations of county ordinances and the fee of six dollars provided for in such section is collected by the magistrate courts of St. Louis County only in such cases.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

THOMAS F. EAGLETON
Attorney General