

July 31, 1964



Honorable Paul D. Hess, Jr.  
Prosecuting Attorney  
Macon County Courthouse  
Macon, Missouri

Dear Mr. Hess:

Your request for an opinion of this office reads as follows:

"In a civil case (pertinent to the adoption of a child), wherein a defendant parent is initially represented by employed counsel but has now had filed through such counsel an affidavit stating that such defendant has used all available funds and yet wishes to appeal from the Circuit Court decision and as a poor person to secure a copy or copies of the transcript of record necessary for such appeal, from what source, if any, may funds be secured for payment to the Court Reporter of the transcript copies?"

Section 485.100(2), V.A.M.S. 1949, provided:

". . . any judge may, in his discretion, order a transcript of all or any part of the evidence or oral proceedings for his own use, and the court reporter's fees . . . shall be taxed in the same manner as other costs in the case;"

Section 485.100 V.A.M.S. 1949, was amended in 1955 to provide:

". . . Any judge, in his discretion, may order a transcript of all or any part of the evidence or oral proceedings, and the court reporter's fees for making the same shall be paid by the county, upon a voucher approved by the court, and taxed against the state or county as may be proper. . . ."

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The 1955 statute gives the judge discretion in ordering a transcript, to be paid for by the county. This would indicate a legislative intent to broaden the judge's power to order transcripts by dropping the provision of the 1949 statute "for his own use." By the dropping of restrictive words in a statute, the legislative intent is inferred to broaden the effect of the statute. Also, the words are general words in nature and should be liberally construed. Thus, we are of the opinion that a poor civil defendant may properly be allowed a transcript for appeal at the judge's discretion. In addition, the legislature granted discretion in the judge to order a transcript. This indicates the statute is to have broad and comprehensive application.

A related statute, Section 514.040 RSMo 1959, which provides for poor plaintiffs, has been interpreted to allow a free transcript for appeal to poor plaintiffs. State ex rel. LaRue v. Hitchcock, 171 Mo. App. 109, 153 SW 546. Since it is within the judge's discretion to allow the transcript for poor plaintiffs, it would not seem an abuse of discretion to allow poor defendants a transcript for appeal. This case also indicates the long legislative history of Missouri to open their courts to those without financial means. In addition, Section 485.100 specifically allows criminal defendants transcripts for appeals. Thus, in view of Section 485.100 RSMo 1959, and Section 514.040 RSMo 1959 which clearly allows transcripts for appeal to poor plaintiffs and criminal defendants, we do not feel the legislature intended to deny poor defendants the same. These statutes, as a whole, indicate legislative intent to carry out the mandates of Article I, Section 14 of the Constitution of Missouri which provides:

"That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay."

It is the apparent purpose of the 1955 amendment to include all possible groups and situations so that our courts will be open to all, regardless of financial ability.

In view of the 1955 amendment to Section 485.100 RSMO 1949, allowing a court discretion in ordering transcripts by deleting all restrictive language and Article I, Section 14, of the Missouri Constitution and the related Missouri statutes, we are

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of the opinion that a judge may allow a poor civil defendant a transcript for appeal, the cost of which transcript shall be paid by the county.

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

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