

COURTS:
MAGISTRATES:
EXECUTIONS:
FEES:

Under Section 483.610, RSMo 1959, magistrate court clerks should charge thirty-five cents for issuing all executions in civil cases.

OPINION NO. 291

November 26, 1968

Honorable Robert H. Branom
State Representative--35th District
Missouri House of Representatives
2151 69th Street
Hillsdale, Missouri 63121



Dear Representative Branom:

This is in reply to your request for our official opinion concerning what is meant by the term "each renewal" of execution in civil cases in the magistrate courts regarding the fees charged therefor, under the provisions of Section 483.610, RSMo 1959, the applicable portion of which reads as follows:

"1. There shall be charged and collected by the clerks of the magistrate courts fees for certain of their services as follows:

For issuing each execution in civil cases-----	\$0.35
For each renewal of execution in civil cases-----	.25
For making certified copies on appeals or certiorari, in civil cases, for each one hundred words-----	.10
For copies of records, pleadings or instruments on file in the office of such clerks, for every one hundred words and figures-----	.10"

Section 517.910, RSMo 1959, regarding magistrate court procedure provides:

"Execution, except as otherwise herein provided, shall have the same force and effect and be proceeded upon the same as executions issued out of other courts of record; provided, the return date of executions issued by courts of record

Honorable Robert H. Branom

not having terms shall be stated in the writ of execution but no such execution shall be returnable in less than thirty days, nor more than ninety days from date of issuance."

Where a statute uses the term "execution" without further definition, it has been held that no distinction is intended between types of execution but that the general definition should apply. Smith vs. Rogers, et al., (Mo. Sup. 1905), 90 S.W. 1150, 1152, stating (citing authority): "A writ of execution is the process by which a court carries out its judgment." See also Weniger vs. Weniger, (MA 1930), 32 S.W. 2d 775, 776. In 33 C.J.S., Executions, Section 1, we find execution defined as " * * * a judicial writ issuing from the court where the judgment is rendered, directed to an officer thereof, and running against the body or goods of a party, by which the judgment of the court is enforced"; and (Section 5 (b)): " * * * a money judgment being an entirety, separate executions cannot issue on each of the counts of the complaint, although there were findings and a judgment on each count separately; but where a judgment decrees a distinct and separate amount in favor of particular plaintiffs, a separate execution may issue in favor of each." The form of general executions in Missouri is prescribed in Section 513.025, RSMo 1959.

A "renewal execution" is defined thusly in 33 C.J.S., Executions, Section 85 (f):

"A renewed execution is not a different one from the original but derives its efficacy, not from the mere change of its date, but from the original signature of the clerk.

* * * * *

Under some statutes the reissuance of an execution with a renewal thereof indorsed thereon is authorized. There must be a substantial compliance with the terms of these statutes. . . Authority to renew an execution does not make it permissible to issue a different kind of execution."

A statute providing procedure in the justice courts for an unsatisfied execution to be "renewed" from time to time by the justice's indorsement on the original document was on the books from at least 1835 (R.S. 1835, p. 366, Section 8) until its repeal

Honorable Robert H. Branom

in 1945 following adoption of the new Constitution (R.S. 1939, Section 2706; repealed L. 1945, p. 1078). The antecedent of our present fee schedule statute, Section 483.610, containing court charges for "renewal" of executions first appears in R.S. 1879, Section 5622, providing as now thirty-five cents for execution and twenty-five cents for "renewal" of execution. The old substantive renewal by endorsement statute was discussed, along with justice court executions in general (then Section 4038, R.S. 1899), by the St. Louis Court of Appeals in Commercial Real Estate and Brokerage Co. vs. Reimann, (Mo. App. 1906), 93 S.W. 305, 306:

"Appellants say a justice of the peace has no power to issue an alias execution, and that his authority in the matter of executions is confined to issuing one and renewing it from time to time. In support of this position, we are cited to that section of the statute which provides that if an execution is not satisfied, it may be renewed by the justice at the request of the plaintiff by an indorsement to that effect signed by him, which indorsement shall renew the execution for 90 days from the date it is made. Rev. St. 1899, §4038. This point looks to us to be more captious than substantial. The second execution, issued by the justice, was tantamount to the renewal of the first one, which had not yet expired. The second one ran for precisely the same time that the first one would, had it been renewed. It has been decided once by this court, and taken for granted in other cases, that a justice has power to issue an alias execution. *State, to Use, v. Boettger*, 39 Mo. App. 684; *State ex rel. v. Rainey*, 99 Mo. App. 218, 73 S.W. 250; *State ex rel. v. Stokes*, 99 Mo. App. 236, 73 S.W. 254. A justice's judgment will support an execution for 3 years, and may be renewed from time to time for 10. An execution cannot be renewed after it has expired. *State, to Use, v. Boettger, supra*. Now it is unreasonable to say that if, from inadvertence or a belief that no goods can be found to levy on, an execution is allowed to lapse, the plaintiff never can have an alias, even though he discovers plenty of property subject to

Honorable Robert H. Branom

levy. Freeman says a plaintiff's right to have an alias execution as long as his judgment remains alive and unpaid, is given by the common law and no statutory authority for an alias need be shown; that the right exists unless expressly taken away by statute. Freeman, Executions (3d Ed.) §48. We decline to hold that the alias execution was void, and the summons to the garnishees, by virtue of it, failed to confer jurisdiction of them on the court."

State v. Boettger, supra in above quote, also held that under justice of the peace practice, an execution could be renewed but not after the old one had expired. With no statutory "renewal" now in effect, all executions issued are now new executions.

It therefore appears that since 1945 there has existed no authority in Missouri for a "renewal" of execution and the consequent twenty-five cent fee for such service in the magistrate courts, and that the twenty-five cent charge for "renewal" of executions contained in Section 483.610, RSMo 1959, is thus inoperative.

CONCLUSION

It is the opinion of this office that under Section 483.610, RSMo 1959, magistrate court clerks should charge thirty-five cents for issuing all executions in civil cases.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, William L. Culver.

Very truly yours,



NORMAN H. ANDERSON
Attorney General