COURTS:
CLERKS OF COURTS:
FEES:
COSTS:

An opinion with respect to House Bill No. 35 of the 75th General Assembly (Sections 483.530 and 483.540,V.A.M.S.) relative to numerous questions concerning the fees of clerks of certain courts of criminal correction, circuit and common pleas courts.

February 11, 1970

OPINION NO. 33

FILED
33

Honorable James G. Lauderdale
Prosecuting Attorney
Lafayette County Court House
Lexington, Missouri 64067

Dear Mr. Lauderdale:

This letter is in response to your request concerning certain questions relative to fees of clerks of courts of criminal correction, clerks of circuit courts and of clerks of courts of common pleas. The questions arise out of the repeal of Section 483.530 and 483.540, RSMo 1959, and the two new sections that are enacted in lieu thereof by House Bill No. 35 of the 75th General Assembly also designated as Sections 483.530 and 483.540.

Section 483.530 of the corrected, truly agreed to and finally passed House Bill No. 35 of the 75th General Assembly states in full as follows:

> "1. The clerks of the circuit courts, courts of criminal correction, and courts of common pleas of this state possessing criminal jurisdiction shall collect the following fees and no others for their services in criminal proceedings:
>
> "For each criminal case----------$7.50
> For each appeal from municipal court---- 7.50
>
> "The fees collected shall be paid into the county treasury as provided in section 483.560.
>
> "2. No fee shall be charged by any clerk of a circuit court or of a court of common pleas

possessing criminal jurisdiction in any criminal case against the state or any county, unless it is expressly allowed in this section; except that when any defendant in a criminal case shall be granted an appeal to the supreme court, the fees of the clerk for making out and certifying the transcript shall be paid by the state or county if the defendant shall be unable to pay the same."

Section 483.540 of the Bill states in full as follows:

"1. The clerks of the several circuit courts in counties of the first class having a charter form of government and in counties of the second, third and fourth class, and of the courts of common pleas, shall collect in all civil proceedings the following fees for their services:

"Each civil case, with one defendant--------$12.00
Each additional summons issued for
additional defendants----------1.00
Each alias summons issued----------1.00
Each pluralis summons issued----------1.00
Each third party defendant issued----------1.00
Each appeal from municipal courts----------10.00
Each appeal from magistrate courts----------10.00

"In circuits where there are more than one section, room or division of the court, costs in any case shall be charged in only the division or divisions into which the case may be carried.

"2. All fees collected shall be paid into the county treasury as provided in section 483.560."

We will not quote the repealed sections, 483.530 and 483.540 in full. However, we will refer to portions of them as we answer the questions that have been posed.

The questions with the answers are separately stated in the order that you have given them to us.

With respect to the questions that you have captioned as relating to criminal costs:

"1. Does the Flat fee of $7.50 include an unlimited number of continuances, <u>subpoenas and certificates and seals</u>?"

It is our view that the fees allowed in Section 483.530 of the Bill include all fees for services in criminal proceedings and since the previous provisions relating to a 25 cent charge for every subpoena and a 50 cent charge for each certificate and seal authenticating a copy of a record were repealed, the clerk has no authority to charge

any additional amount for continuances, subpoenas, certificates and seals.

> "2. How about Grand Jury costs eliminated by H. B. 35? (No. 483.530 For swearing and entering each Grand Jury .50¢)

The previous provisions relative to grand juries allowed a 25 cent fee for every indictment returned by a grand jury and a 75 cent fee for a venire to summon a grand or traverse jury when one shall have been actually ordered and issued. Previous provisions also allowed a 50 cent fee for swearing and entering each grand jury. These provisions were specifically repealed and there is presently no authority for charging any such fees.

> "3. What charges may be made for copies of records and papers, certified or otherwise?"

Previous Section 483.530 contained several provisions relative to charges and fees allowed for various copies. Inasmuch as these provisions have been repealed and other provisions enacted in lieu thereof, the clerk has no authority to charge for such copies and records and papers certified or otherwise.

> "4. How about every acknowledgment of a deed eliminated by H.B. 35? (No.483.530 for every acknowledgment of a deed .50¢)

Previous Section 483.530 allowed a 50 cent fee for acknowledgment of a deed or other writing, including certificate and seal. Since this provision was repealed, there is now no authority for such a charge.

> "5. What charges may be made in Parole cases?"

It is our understanding that parole cases are presently considered by many clerks as separate civil causes. On this basis, clerks have been charging the law library fee under Section 514.470, RSMo Supp. 1967, which allows the judge or judges of the circuit court or court of common pleas in certain counties to require the attorney or attorneys for the party filing the civil suit to deposit such a fee before summons shall issue.

We recognize that it is possible to consider a request for parole as a separate civil application. However, it is our view that such a fee cannot be required as a condition to the filing or hearing of such application and that a parole case is a continuation of a criminal action within the exception to that section. Therefore, we conclude that there is no authority to require separate charges in parole cases.

As regards your questions relating to civil costs:

> "1. May a charge be made for extra Notices of Publication and Certified copies (as required in incorporation of Water (247.010) or Fire (321.520) Districts?"

It is clear, of course, that the publication charges of the newspaper must be paid, however we find no authority under the sections cited for the clerk to charge a fee for his services.

> "2. What charges may be made for making extra copies of Commissioner's Reports?"

The repealed sections of Section 483.540 provided a fee of 35 cents for filing and entering a report of referees, sheriffs or commissioners. The repealed sections also allowed a fee of 10 cents for every hundred words of copies of records and papers. The repeal again appears to answer the question and leaves us with the conclusion that the clerk is no longer authorized to make such a charge.

> "3. What charges may be made for copies of records and papers, certified or otherwise?"

Again, the authority to charge this fee was repealed and the clerk may no longer make such a charge.

> "4. How many submissions to the Court are included in the Flat Fee charge of $12.00?"

It is our view that present Section 483.540 allows $12 for each civil case with one defendant and that it was the legislative intent that this fee cover the costs for that case no matter how many times it is tried.

> "5. In case a Motion for Change of Custody is filed sometime after a final Decree in a Divorce or other case, does the flat fee again become due as costs?"

With respect to divorce fees, Section 193.370, RSMo 1959, allows the clerk of the court to charge 50 cents for each certificate prepared and forwarded by him to the state registrar to be taxed as costs in the case in which the decree was rendered. This fee provision still remains and was not repealed. It is not directly pertinent to your question, however we felt that it is worth the notation.

It is our opinion that a motion for change of custody filed after the final decree of divorce is to be considered a separate proceeding under Section 483.540 of the Bill and accordingly the fees authorized thereby may be charged for the motion. We believe that this is true regardless of the fact that it is obvious that such motions are a continuation of the original divorce action.

> "6. What about execution costs in a case? (sometimes 10 & more)"

It is our belief that the flat fee provisions of Section 483.540 were intended to include all necessary subsequent execution costs

since the execution of judgment is directly related to the case in principal.

"7. What basis of charge can be made in Change of Venue Transcripts?"

It is our understanding that you are not inquiring about the change of venue fee as prescribed by Civil Rule 51.17, but instead about the documentation transcribed. In accordance with our previous conclusions, we necessarily also conclude in answer to this question that the repealed sections covered the costs of such transcripts. However, there is no provision in the new Section 483.540 for such a charge; and accordingly, the clerk has no authority to make a separate charge for change of venue transcripts.

"8. Does each Exception in a Condemnation case become a case in itself?"

Initially, of course, a condemnation proceeding may include numerous defendants and as such initially constitutes one case. However, each exception or change of venue gives rise to separate proceedings, and such separate proceedings justify the charging of the fees provided by Section 483.540 of the Bill. State ex rel.vs Curtis, 283 S.W.2d 458 (1965).

"9. Does the flat fee cover jury and multiple jury trials?"

Section 494.170, RSMo 1959, contains certain provisions relative to costs of fees allowed jurors. However, these provisions are not related to the charges of the clerk. It is our view that the flat fee contained in the Bill covers all such civil cases whether tried by a jury or juries or by a judge.

"10. Does the flat fee in H.B. 35 cover orders and certificates and Seals without limit as to number?"

For the reasons that we have stated previously, we are of the view that the flat fee does cover such orders and certificates although hypothetically we are not able to say whether such orders and certificates and seals may be issued "without limit as to number."

"11. What about filing entering and recording Mechanics Liens?"

The previous section specifically covered filing and entering each mechanics lien and allowed a 30 cent fee therefor. However, this provision was not retained in the amended section and the clerk has now no authority to make such a charge.

"12. What about charges for a number of subpoenas?"

Subpoenas are not covered under the new provisions of Section 483.540 although they were covered under the repealed section which allowed 25 cents for every subpoena in a civil case. There is presently no authority for the clerk to make an additional charge for the issuance of such subpoenas.

"13. What determines Cost in Trust Estates?"

Although a trust estate case is by nature ex parte, it is our opinion that the legislature intended the $12 flat fees as provided in Section 483.540 of the Bill to apply.

"14. What about cost on Certificate & Seal taken separate?"

The previous provisions for certificates and seal allowed the clerk a fee of 50 cents whether or not it was in conjunction with the original case. That provision has been repealed and was not reenacted by the Bill. There is, therefore, no authority for the clerk to charge such fees.

"15. Hung Jury, case again tried, and additional subpoenas issued. Is this all included in a $12.00 flat fee?"

In our view, the legislature intended that the flat fee would cover such a situation regardless of how many times the case had to go before a different jury and regardless of the number of subpoenas that need to issue.

Finally and most important, we are confronted with the question that you have not directly asked; but which is inherent in the framework of the questions presented. That is, whether the respective circuit courts have the authority to fix a rate of charge for services rendered by the clerks which are not directly related to the principal proceedings. We have concluded that the flat fee was intended to and did in fact replace the itemized charges relating to civil and criminal proceedings except as otherwise particularly specified. The remaining question concerns whether any charges can be made by such clerks for services required of them which are not directly related to the principal proceedings and not otherwise covered by statute. Some consideration has been given to the most difficult question of whether the respective circuit courts have authority to fix charges for such services. Obviously the courts have the inherent power to do all things which are necessary to preserve their existence. Pogue v. Swink, 284 S.W.2d 868,872 (1955).

Also, under Supreme Court Rule 50.01, the courts of appeal and the trial courts may make rules governing the administration of judicial business if the rules are not contrary to the rules of the Supreme Court, to the constitution, or the statutory law in force. We have been unable to find any Missouri or other case in support of the power of the circuit court to authorize the circuit clerk to fix charges for services in the absence of direct statutory authorization. It has been

held that where there is no statute fixing the fees of certain officers it was nevertheless beyond controversy that they were entitled to compensation for their services. Supreme Court of Iowa, Ripley v. Gifford, 11 Iowa 367 (1860).

That decision, of course, related to compensation as such and the Missouri rule with respect to the compensation of officers is that the officer cannot legally claim remuneration unless the statute has expressly conferred the right, Shed v. Kansas City, St. Joseph and Council Bluffs Railroad Company, 67 Mo.687 (1878); and such officer claiming fees for services must be able to put his finger on some statute expressly allowing the fee he claims. State ex rel. v. Board of Police Commissioners, 108 Mo.App.98, 82 S.W. 960 (1904). It must be borne in mind, however, that the large body of cases relating to the compensation of officers do not furnish us with a real guide in the present circumstances wherein the officers receive fixed compensation and the fees in question, if chargeable, would be payable into the county treasury.

It is our view that the rule-making power of the courts and the inherent power of the courts do not extend to or authorize such courts to empower the circuit clerks with the authority or the obligation to charge for the services that they render. The legislature has historically governed such charges as well as the related problems of the reimbursement of the circuit clerks and it is obvious from the legislation that we have just discussed that the legislature specifically repealed and withdrew from the circuit clerks the authority and obligation to make any such charges. Having done so, it is not within the province of the courts to supply any deficiency which the courts may believe the legislature created. In reaching this conclusion, we are governed by the fact that the business of the courts is the administration of justice and not the administration of county fiscal affairs.

We conclude that the legislature has withdrawn the authority of such circuit clerks to charge for certain services with some exceptions and that such circuit clerks still have the obligation to perform such services but have no right to levy charges therefor and the right to charge for such services cannot be granted by the circuit courts governing the circuits.

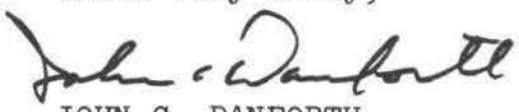
We note that in State v. Parker Distilling Co., 236 Mo.219, 139 S.W.453 (1911), the Supreme Court of Missouri on a motion for a rule by the Attorney General held unconstitutional a statute which directed the clerk of said court to distribute copies of opinions to litigants free of charge, citing as one reason that said statute was in violation of the constitutional prohibition against the use of public funds for private use. However, in view of the provisions of present Supreme Court Rule 83.28, which requires such distribution, we are of the opinion that the decision on the motion in State v. Parker Distilling Co. is not controlling.

We are also of the opinion that the extent and circumstances under which the courts may require the services of the clerks of such courts for the administration of justice is in each instance a decision that must be left to the courts.

CONCLUSION

This opinion with respect to House Bill No. 35 of the 75th General Assembly (Sections 483.530 and 483.540, V.A.M.S.) relative to numerous questions concerning the fees of clerks of certain courts of criminal correction, circuit and common pleas courts, as set out in detail in the opinion, was written by my assistant, John C. Klaffenbach, and is hereby approved.

Yours very truly,



JOHN C. DANFORTH
Attorney General