

CRIMINAL PROCEDURE:
BONDS:
BAIL:

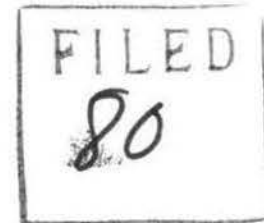
Section 56.310, RSMo 1969, which provides that a prosecuting attorney is entitled to receive ten percent of all sums collected if not more than

five hundred dollars and five percent of all sums over five hundred dollars, to be paid out of the amount collected, on recognizances given to the state in criminal cases and which are or may become forfeited, applies to bail bonds as well as recognizances.

AMENDED OPINION NO. 80

August 7, 1970

Honorable Thomas R. Gilmore
Prosecuting Attorney
Scott County
217 South Kingshighway
Sikeston, Missouri 63801



Dear Mr. Gilmore:

This is in response to your request for an opinion on the question of when a prosecuting attorney is entitled to receive fees on sums collected on recognizances pursuant to Section 56.310, RSMo 1969.

Section 56.310, RSMo 1969, provides in part:

"Prosecuting attorneys shall be allowed fees as follows, unless in cases where it is otherwise directed by law: For collections on recognizances given to the state in criminal cases, and which are or may become forfeited, ten percent on all sums collected, if not more than five hundred dollars, and five percent on all sums over five hundred dollars, to be paid out of the amount collected;. . ."

The first question which your request raises is whether a distinction exists between "recognizances" and "bail bonds." Sections 544.420 through 544.660, which deal with these matters, use the two terms interchangeably. It is the opinion of this office that, while there may be some technical differences between these two terms in civil law, they are virtually indistinguishable when used in criminal law. We, therefore, believe that all bail bonds (both cash and surety) come under the meaning of Section 56.310.

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A second question is whether Article IX, Section 7 of the Constitution of Missouri prohibits the payment of such fees to prosecuting attorneys. Such section provides in pertinent part:

" . . . All interest accruing from investment of the county school fund, the clear proceeds of all penalties, forfeitures and fines collected hereafter for any breach of the penal laws of the state, the net proceeds from the sale of estrays, and all other moneys coming into said funds shall be distributed annually to the schools of the several counties according to law." (Emphasis added)

It is the view of this office that the term "clear proceeds" used in the constitution should be interpreted as the net proceeds after costs and collection fees are deducted. In order to construe Section 7 of Article IX of the Constitution and Section 56.310, RSMo, so as to harmonize and be consistent with each other, we believe that when a bail bond is forfeited and proceeded upon by scire facias to final judgment and execution pursuant to Section 544.640, RSMo 1969, the fees to which a prosecuting attorney is entitled under Section 56.310, RSMo 1969, should first be paid and that the net proceeds remaining should then be applied to the county schools.

The above is supported by the case of State v. Hoeffner, 124 Mo. 492, 28 S.W. 5 (1894), which considered the above statute and constitutional provision and the court said, Mo. l.c. 497:

"It will thus appear that the people of this state have in the most solemn form set aside all fines and forfeitures as a part of the school fund, and by statute enjoined upon all prosecuting attorneys the duty of collecting these forfeitures and as an incentive to diligent service in so doing, in addition to the salaries and fees otherwise allowed by law to those officers, a commission of ten or five per cent. as the case may be is added, 'to be paid out of the amount collected.' . . ."

We would, however, point out that any fees on forfeited recognizances collected by county prosecutors would be subject to payment over to the county treasury as provided by Sections 56.320, 56.330 and 56.340, RSMo 1969.

CONCLUSION


Section 56.310, RSMo 1969, which provides that a prosecuting attorney is entitled to receive ten percent of all sums collected

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if not more than five hundred dollars and five percent of all sums over five hundred dollars, to be paid out of the amount collected, on recognizances given to the state in criminal cases and which are or may become forfeited, applies to bail bonds as well as recognizances.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Dale L. Rollings.

Very truly yours,

A handwritten signature in cursive script that reads "John C. Danforth". The signature is written in dark ink and is positioned above the printed name and title.

JOHN C. DANFORTH
Attorney General