

Answer by Letter (Klaffenbach)

February 24, 1971

OPINION LETTER NO. 142

Honorable Richard G. Steele
Assistant Prosecuting Attorney
Cape Girardeau County
Cape Girardeau County Court House
325 Broadway
Cape Girardeau, Missouri 63701



Dear Mr. Steele:

This letter is in response to your opinion request in which you asked whether the total compensation provisions of Section 50.334, RSMo 1969, relating to circuit clerks precludes a circuit clerk from receiving change of venue fees pursuant to Section 483.560, RSMo 1969, and the fifty cent judgment fee which was discussed in Attorney General's Opinion No. 75, dated December 22, 1961, to Riley, interpreting Section 483.530, RSMo 1959.

Section 483.560, RSMo 1969, states:

"1. The clerk of the circuit court of such counties shall pay monthly into the county treasury the amount of all fees collected by virtue of his office except fees collected in cases of change of venue from other counties, and every clerk shall be liable on his official bond for all fees collected and not accounted for by him as provided by law.

"2. It shall be the duty of the county court to examine such monthly reports

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and to require the prosecuting attorney to enforce payment of all fees therein shown to be unpaid in any manner now or hereafter provided by law, and to that end, such prosecuting attorney shall have authority, at any time, to direct the issuance of any execution or fee bill for costs in any case in which any costs accruing to the county are unpaid."

However, with respect to change of venue fees and the disposition of such fees, we refer you to Supreme Court Rules 51.17 and 51.18 which are similar to Sections 508.220, RSMo 1969 and 508.230, RSMo 1969.

That is, Rule 51.17 states:

"Whenever any change of venue is applied for in any civil cause from any circuit court of any county, or city constituting a county, to any other county or such city, in another circuit, the party or person applying for such a change of venue, shall, with his application, deposit with the clerk of the circuit court the sum of ten dollars; and thereupon, if such change of venue is awarded, the clerk of said court shall transmit said sum of ten dollars, together with the transcript and proceedings in the cause, to the clerk of the court to which the removal is ordered; and no transcript shall be transmitted or received by any clerk on such change of venue, as aforesaid, unless said sum of ten dollars shall accompany such transcript, provided however, that whenever any cause shall be transferred to another circuit by agreement of parties, such sum shall be paid by both parties, before any change of venue is awarded, in equal shares, and transmitted as aforesaid."

Rule 51.18 states:

"Said sum when received shall be paid into the county treasury in the same manner as other fees of the clerk of the court. All moneys received by the clerk

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of the circuit court of the city of St. Louis, under and by virtue of the provisions of this Rule and of Rule 51.17, shall be paid by him into the city treasury, and used for the payment of the salaries of the circuit judges and court stenographers of said city. If no change of venue is granted, the money paid under this Rule and Rule 51.17 shall be returned to the party or parties paying the same."

We believe that it is clear that the Supreme Court Rule controls, and under Rule 51.18, such sum has to be paid into the county treasury by the clerk of the circuit court to which the removal is ordered in the same manner as are other fees of the clerk of the court.

With respect to your question concerning the fifty cent fee, we note that in our opinion, cited above, we interpreted the provisions of Section 483.530, RSMo 1959, and as such provisions have since then been repealed, there is now no authority for a separate fifty cent fee for entering judgment or nolle prosequi. We are, accordingly, withdrawing Opinion No. 75, dated December 22, 1961 to Riley.

With respect to our reasoning generally concerning Section 50.334, and Section 483.530, we enclose Opinions No. 88, dated January 19, 1970, to Parker, No. 33, dated February 11, 1970, to Lauderdale with an April 6, 1970, Addendum to Opinion No. 33.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosures:

Op. No. 88
1-19-70, Parker

Op. No. 33
2-11-70, Lauderdale

Addendum to Op. No. 33
4-6-70