

November 24, 1971

OPINION LETTER NO. 420
Answer by Letter - Klaffenbach

Honorable Robert B. Paden
Prosecuting Attorney
DeKalb County
Post Office Box 301
Maysville, Missouri 64469



Dear Mr. Paden:

This letter is in answer to your opinion request in which you ask whether the circuit clerk has authority to pay the costs of an action out of a cost deposit made by the plaintiff, after the rendition of a default judgment in which the costs are taxed to a defendant against whom execution cannot be levied.

Without attempting to cover the myriad situations relating to the taxation of costs and deposits for same which are largely set out in Chapter 514 of the Revised Statutes of Missouri and Supreme Court Rules 77.01, et seq., it is our view that a deposit made by a party as security for costs by its very nature is security for the payment of such costs. Even though the deposit was made by the plaintiff and the costs taxed against the defendant, the plaintiff must look to the defendant for recovery. See Hoover v. Missouri Pac. Ry. Co., 21 S.W. 1076 (Mo. 1893) and Baggs v. Lanning, 1 Mo. 261 (1822).

Our answer is therefore that the clerk of the circuit court has authority to pay the costs of such an action out of a deposit made by the plaintiff.

Very truly yours,

JOHN C. DANFORTH
Attorney General