CIRCUIT CLERK:
FEES:
COSTS:

If a rule of the circuit court requires a deposit to secure a fee of the circuit clerk in civil cases specified in Section 483.540 (H.C.S. S.B. No. 496, 76th General Assembly, Second Regular Session) and the charge has accrued, fifty percent of the clerk's fee must be paid to the director of revenue each month and fifty percent to the county. If a rule of the court does not expressly allocate the deposit, the distribution of the clerk's fees is to be made after the liability for costs has been established and the costs collected in whole or in part. If, when liability has been established, accrued costs cannot be collected in full, charges not having any statutory priority or not allocated under court rule should be prorated.

OPINION NO. 26

January 24, 1973

FILED
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Honorable Thomas I. Osborne
Prosecuting Attorney
Audrain County
Mexico, Missouri 65265

Dear Mr. Osborne:

This opinion is in response to your request in which you ask whether the fifty percent of the fees of the circuit court clerk in civil cases which are required to be paid to the director of revenue under the provisions of new Section 483.541 (H.C.S.S.B. No. 496, 76th General Assembly, Second Regular Session) are to be taken from the cost deposit before the cause is tried or at the termination of the case when the liability for costs is determined.

Section 483.541, provides:

> "1. It shall be the duty of the clerk of all circuit courts and courts of common pleas of this state with the approval of the judge of the court to charge, on behalf of the state, fifty percent of every fee that accrues in his office by reason of sections 483.530 and 483.540, and to receive the same, and at the end of each month pay over to the director of revenue all such money collected by him as such fees, taking two receipts therefor, one of which he shall immediately file with

> the state treasurer, and shall at the end of each month make out an itemized and accurate list verified by affidavit of all fees collected by him, giving the name of the person or persons paying the same, and turn over the report to the director of revenue.
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> "2. On or before the thirty-first day of January of each year the circuit clerk shall file a verified report with the county treasurer or treasurer of the city of St. Louis, as the case may be, and with the director of revenue, showing all fees due and unpaid in his office in cases where the liability thereof has finally been established during the preceding year, showing the name of the person or persons owing same, and stating that he has been unable, after the exercise of diligence, to collect the same. The prosecuting attorney of the county or of the city of St. Louis shall collect such unpaid fees and shall deposit them with the circuit clerk, who will receipt him therefor, and the clerk shall forward the funds to the proper authority as is provided by law.
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> "3. All circuit court fees received by the director of revenue shall be deposited by him with the state treasurer in the 'Court Judicial Fund' which is hereby created; provided, that the treasurer shall deposit all moneys in excess of two hundred fifty thousand dollars in general revenue. The money in the court judicial fund shall be used for no other purpose than for the payment of salaries of the supreme court, districts of the court of appeals, and circuit judges and commissioners; provided, however, that such salaries shall be paid from the general revenue fund of the state whenever the balance in the court judicial fund or the appropriation from such fund is insufficient to pay the salaries."

The fees to which you refer are those under Section 483.540, which was enacted concurrently with the above section and which provides:

> "1. The clerks of the circuit courts and of the courts of common pleas, shall charge and

> collect in all civil proceedings the following fees to aid in defraying the expenses of judicial administration:
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> | | |
> |---|---|
> | Each civil case instituted in that court. . . . . | $25.00 |
> | 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. . | 20.00 |
> | Each appeal from magistrate courts . | 20.00" |

We also understand that some circuit courts acting in contemplation of the increased fees under Section 483.540 have raised the amount required for filing fees to secure adequate security for the payment of the increased fees and that such cost deposits vary considerably.

We find no express statutory authority for the deposit of a fixed amount of costs by general rule of court on the court's initiative. Costs in civil cases are usually secured in the manner and under the provisions of Chapter 514, RSMo and Supreme Court Rules 77.01, et seq., which contain no such express authorization for the circuit courts to provide for such fixed deposits by rule. We know of no express Supreme Court Rule fixing such cost deposits or authorizing the lower courts to fix such cost deposits under Section 4 of Article V respecting the courts supervisory jurisdiction over inferior courts. We presume however, without passing on the question of the circuit court's authority to make such rules that the circuit courts believe their authority is based on the provisions of Supreme Court Rule 50.01 which provides:

> "Courts of Appeals and 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 to statutory law in force."

We have not been advised as to whether or not the circuit court rules with respect to such deposits require that the deposit be allocated for a particular purpose or purposes. It is common knowledge that certain statutes, for example Sections 514.440, RSMo et seq., authorize the judges of the circuit courts, by rule of court, to require a deposit for law library fees and it follows that such deposits must be collected and handled in accordance with the particular provisions involved.

Section 483.541, of course, literally applies only to Sections 483.530 (clerks' criminal costs, not applicable to this question) and 483.540 (clerks' civil costs, as quoted above). Clearly there are other costs involved in civil litigation which are not within such sections and not subject to the provisions of Section 483.541, such as court reporters' fees, sheriffs' fees, witnesses and jury fees and the like.

We previously held in our Opinion No. 420, dated November 24, 1971 to Paden, copy enclosed, 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 even though the costs were taxed against the defendant and recognized that such deposits were simply security for costs incurred and that the plaintiff in such a case must look to defendant against whom costs were taxed for recovery. Thus this office, and in our view the courts, have looked on such deposits as security.

It is our view that if the rule of the circuit court requires a deposit to secure a fee specified in Section 483.540, such as the twenty-five dollar fee for each case instituted or any of the enumerated fees or charges, the court by its rule has expressly allocated such funds deposited to the particular charge or charges required to be made by the clerk and payment must be made at the end of each month to the director of revenue as provided in Section 483.541 after the service has been rendered or the charge accrued. If the rule does not expressly allocate the funds required to be deposited to any particular charge or charges required to be made by the clerk under Section 483.540, it is our view that the distribution is to be made by the clerk as provided in Section 483.541 at the conclusion of the case when the liability for costs has been finally established and the fees which are earned and accrued have been collected in whole or in part.

Finally, the next logical question is whether the clerk should prorate the deposit and the amount collected according to allowable costs when the liability for costs has been established and the total amount of the costs exceeds the cost deposit and the amount collected. We believe that this question is answered by our Opinion No. 82, dated May 22, 1939 to Short, which we quote in part as follows:

> "In your next question you ask whether a clerk when he cannot collect the full amount of costs should pro rate the amount he does have on hand with all of the parties entitled to fees. It is our opinion that the clerk should pro rate such funds among all parties entitled to fees, including yourself, the sheriff, witnesses and jurors. There is no

> statute in this state which gives any of these persons a prior claim to any of the deposits on hand or amounts collected for the payment of costs. None of the appellate courts, as far as we have been able to determine have ever passed on this question, but since the law does not give any prior claim to any of such parties, it is only equitable and fair that the same should be pro rated."

It remains our view that such costs, with the exception of cost deposits expressly allocated by court rule, should be prorated if necessary in the absence of any statute establishing priorities. Obviously if costs are prorated, the director of revenue and the county are each entitled to fifty percent of the prorated costs coming under Section 483.540.

CONCLUSION

It is the opinion of this office with respect to court costs that:

If a rule of the circuit court requires a deposit to secure a fee of the circuit clerk in civil cases specified in Section 483.540 (H.C.S.S.B. No. 496, 76th General Assembly, Second Regular Session) and the charge has accrued, fifty percent of the clerk's fee must be paid to the director of revenue each month and fifty percent to the county. If a rule of the court does not expressly allocate the deposit, the distribution of the clerk's fees is to be made after the liability for costs has been established and the costs collected in whole or in part.

If, when liability has been established, accrued costs cannot be collected in full, charges not having any statutory priority or not allocated under court rule should be prorated.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. Ltr. No. 420
11/24/71, Paden