

SHERIFFS: Sheriff of third class county has duty  
COSTS: to collect from a defendant convicted  
FEES: in a criminal case in magistrate court  
CRIMINAL LAW: commission of 10% of costs taxed against  
CRIMINAL PROCEDURE: such defendant and to pay such commission  
MAGISTRATE COURT: into the county treasury.  
COUNTIES:

March 21, 1960



Honorable Don M. Chapman, Jr.  
Prosecuting Attorney  
Livingston County  
Chillicothe, Missouri

Dear Sir:

This is in answer to your letter of recent date in which you requested an official opinion, and which letter reads as follows:

"After the fine and costs have been levied by the Magistrate Judge he issues an execution for the sheriff to collect the fines and costs. May the sheriff deduct 10% for the collections of these fines and costs, as in civil executions?"

Livingston County is a county of the third class.

We believe your inquiry to be whether or not the 10% commission provided for in Section 57.290(5), Laws of Missouri, 1953, page 386, is to be collected by the sheriff, and if so, what disposition the sheriff is to make of the moneys so collected. Section 57.290, Laws of Missouri, 1953, page 386, relates to fees and charges to be made by sheriffs in criminal cases. Section 57.290(5) provides as follows:

"These costs shall be taxed as other costs in criminal procedure immediately after conviction of any defendant in any criminal procedure. The clerk shall tax all the costs in the case against such defendant and deliver a certified copy of the same to the sheriff, who shall immediately proceed to collect such costs from the defendant, together with ten per cent on the amount of costs, so collected, as a commission for collecting the same, and

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the clerk shall receive of such commission an amount equal to ten per cent of the fees collected and due such clerk, and the remainder of such commission shall be retained by the sheriff; provided, that in no case shall such commission be taxed against or paid either by the county or the state; provided further, that all costs, incident to the issuing and serving of writs of scire facias and of writs of fieri facias, and of attachments for witnesses of defendant, shall in no case be paid by the state, but such costs incurred under writs of fieri facias and scire facias shall be paid by the defendant and his sureties, and costs for attachments for witnesses shall be paid by such witnesses."

Such section clearly requires the sheriff to collect 10% commission on the amount of costs taxed against a defendant convicted in a criminal case, together with such costs. There is no provision in such section, or elsewhere, for the collection of a commission on fines collected by the sheriff.

Section 57.290, supra, is applicable to criminal cases generally and is, therefore, applicable to collection of costs from defendants convicted in criminal cases in magistrate courts. Section 57.290(5) provides that the clerk of the court in which the conviction was obtained shall receive of such commission collected by the sheriff an amount equal to 10% of the fees collected and due such clerk. Under date of June 20, 1947, this office rendered an official opinion to Honorable Forrest Smith, State Auditor, which opinion held that the only fee that could be collected for services of a magistrate and magistrate clerk in criminal proceedings is the fee provided in what is now Section 483.610, Laws of Missouri, 1955, page 380. Therefore, no part of the commission on costs collected by the sheriff under the provisions of Section 57.290(5) can be paid to the clerk by the sheriff.

Section 13 of Article VI of the Constitution of Missouri provides as follows:

"All state and county officers, except constables and justices of the peace,

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charged with the investigation, arrest, prosecution, custody, care, feeding, commitment, or transportation of persons accused of or convicted of a criminal offense shall be compensated for their official services only by salaries, and any fees and charges collected by any such officers in such cases shall be paid into the general revenue fund entitled to receive the same, as provided by law. Any fees earned by any such officers in civil matters may be retained by them as provided by law."

Section 57.410, RSMo 1949, provides as follows:

"In all counties of the third and fourth classes, the sheriff shall charge and collect for and on behalf of the county every fee accruing to his office which arises out of his duties in connection with the investigation, arrest, prosecution, care, commitment and transportation of persons accused of or convicted of a criminal offense, except such criminal fees as are chargeable to the county. The sheriff may retain all fees collected by him in civil matters."

Under such constitutional and statutory provisions, fees and charges received by a sheriff for his services in connection with the investigation, arrest, prosecution, custody, care, feeding, commitment or transportation of persons accused of or convicted of a criminal offense are to be paid into the county treasury. The collection of criminal costs by the sheriff under provisions of Section 57.290(5), supra, arises out of the sheriff's duties in connection with the prosecution of persons accused and commitment of persons convicted of criminal offenses. It follows that such commission received by the sheriff on costs in criminal cases collected from defendants by the sheriff under the provisions of Section 57.290(5) is payable into the county treasury.

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CONCLUSION

It is the opinion of this office that it is the duty of a sheriff of a county of the third class to collect from a defendant convicted in magistrate court in a criminal case a commission of 10% of the amount of the costs taxed against such defendant and to pay such commission into the county treasury.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, C. B. Burns, Jr.

Yours very truly,

JOHN M. DALTON  
Attorney General

CEB:ml